**DRAFT**
GS:7-24-64

I am going to tell a personal story, because right now it is the only one I can tell.

On the morning of July 16, I appeared in Queens County Criminal Court with Andy Young. Andy is a member of CORE South Jamaica Chapter and had been arrested in connection with the World's Fair demonstration. Andy and his girl gave me a ride back to New York. Since the motion I made had been granted, we were in a happy frame of mind. As I entered the office at about 1:00, an associate rushed up and told me that a boy had been shot by a policeman. He handed me the phone over which I received the first report of the Gilligan case from National CORE.

In accordance with an established CORE procedure for dealing with cases in which police brutality is charged, we

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started our own investigation. Simultaneously, we notified the District Attorney's office and the police department's Civil Complaint Bureau of the fact that CORE had received report of an incident of alleged police brutality requiring investigation.

My first step was to send Mike Silberberg and a young man from National CORE to Wagner Junior High School to look for witnesses. When they reported that witnesses were being held at the 19th precinct, Mike was sent there for the dual purpose of being available to protect the witnesses and to discover their identity. We also arranged for Marguerite Hines, another attorney, and two stenographers to go to the East River Chapter office to interview witnesses being brought in by members of the chapter. by five o'clock, Carl Rachlin, General Counsel of CORE, Val Coleman, Assistant Community Relations Director, and I decided that it was necessary for us to go to the precinct to talk to

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police officials then still interrogating the youngsters who had witnessed the shooting.

We arrived at the precinct just in time to watch detectives take two terrified youngsters out of the building and right past us. With the aid of an attorney of City Commission on Human Rights, we made immediately a strong protest to the District Attorney and to the police department. As a result, we were furnished with the names of a substantial number of witnesses discovered by the police.

Carl, Val and I went to the East River Chapter and to homes of witnesses.

By 9:00 we began to get confirmation that the killing had been needless and senseless.

On the next day, Friday, East River CORE held an orderly march of students from the school to the 19th precinct.

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Both Mike and I were there to prevent undue police interference with the demonstration. Although at least 200 students were involved and hundreds of onlookers watched the march and the demonstration, there was not one bit of disorder. The leaders of the demonstration assisted by members of the Downtown CORE chapter, and the South Jamaica Chapter, made this a very successful CORE demonstration.

Immediately after the demonstration, witnesses began to come in. The more we interviewed, the more the pattern of the killing emerged. The more we learned, the more shocking it was to us that the police failed to arrest Gilligan. While a man's fault or innocence cannot be determined until his trial, the facts certainly provided a basis for an arrest to assure that Gilligan would be available for trial. We were particularly surprised at the official police version of the incident released by Chief Coyle

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a few hours after the shooting since we knew that the police had theard testimony completely contrary to the official statement.

In order to expedite interviewing of witnesses, we asked the Hanna group, law students operating a kind of legal aid service in Harlem, under the leadership of Jim Finney, to help us find witnesses and interviewing them. Jim and his associates proved to me most helpful and diligent.

By Saturday afternoon, it appeared that we would be able to supply to the District Attorney many useful witnesses that police had been unable to find. It would assure a thourough going official presentation to the grand jury.

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I had had the privilege of meeting Mrs. Powell on Friday afternoon and had assured her that CORE would not drop the investigation, but would use every effort to see that justice was done.

On Saturday afternoon, East River told us of a new demonstration in Harlem, to commence at about 6:00. There was no reason to anticipate any sort of disorder after the wonderful demonstration of the preceding day.

At about 9:00, just as I was begining to eat supper, I received word that the police were using violence against the demonstrators and that the surrounding crowd was throwing bottles and garbage at police. I immediately alerted Val Coleman who notified every chapter to send its best people to the scene to keep it peaceful.

Then I called the 28th precinct, asking for their lieutenant. Over the telephone I could hear disorderly bedlam, shouting and sounds of panic. The switchboard man tried to connect me to the Lieutenant, but we could hear him shouting into the

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background to no apparent xx purpose. I immediately tried to get the 6th Division to ask that responsible police officials be sent to the scene.

A few minutes later, I received the shocking news that the police had arrested the CORE leaders who were trying desperately to keep the crowd orderly. It was this one act, for which Inspector Pendergast took responsibility, that in our opinion caused the crowd to become a mob. Subsequently, we learned that right from the start, the police used such obnoxious and provoking tactics as ramming wooden barricades into the crowd. But the removal of the CORE leadership more than any single act, caused the situation to get out of control.

I personally pointed out the danger inherent in these arrests to a Captain at the 19th Precinct, who gave me an evasive answer.

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By the time that more CORE people could arrive at the ~~x~~ scene, hundreds of angry people had joined the crowd.

Various CORE people, including myself, worked through the night in an effort to restore the situation. At no time did the police act with the restraint and common sense that they use in other neighborhoods in ably controlling crowds. Some of the things the police did could not have been more harmful had they be intended to enrage the crowd.

I had sent an associate to night court to get the 15 CORE people who were arrested. In interviewed them all early in the morning. Their story of the begining of the riot is a very strong indictment of the police.

This is not the place to discuss the fundamental reasons for the riot, the total failure of city government officials to meet the needs of and to respect the rights of Negro citizens.

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Since then, my associates and I , just like all CORE people,have been doing everything possible in connection with the riots. For example,.CORE chapters have set up first aid stations. Three CORE members trying to run the first aid stations have been beaten by the police.

But the riots have not kept us from working on the Gilligan case. On the contrary, we are making progress every day. The presentation of evidence to the grand jury has begun and the witnesses we have discovered will be heard.

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**DRAFT**
**GS:8-5-64**

# THE GILLIGAN REPORT

On July 16, 1964, at approximately 9:30 in the morning, Lt. Thomas R. Gilligan, 36, a member of the New York City Police Force shot and killed James Powell, 15, a Negro. This report has beenPrepared by the Congress of Racial Equality to explain what happened and why it happened.

The shooting of citizens, young or old, Negro or White, by policemen in New York is not unusual. Indeed, since the Gilligan case, the newspapers have reported no less than half a dozen such incidents, not counting the scores of shooting in the course of the riots in Harlem and the Bedford-Stuyvesant of Brooklyn. Neither was the Gilligan case the first shooting of a Negro by a policeman in 1964. These very facts led CORE to launch ~~x~~ an investigation immediately and intensively within two hours of the shooting.

There were additional reasons why CORE took a special interest in the Gilligan case. The first reports of the case indicated that the incident had been surrounded by evidence of racism. Witnesses subsequently made it unequivocally clear that racial epithets had been used by the superintendent of 215 E., 76 Street against a group of children from Senator Robert F. Wagner Junior High School and that these epithets led directly to the shooting.

More broadly, CORE had, for some six months prior to the incident, been demanding the establishment of a civilian review board to provide independent investigation of allegations of police brutality. The purpose of this demand was not to provide a forum for unfounded charges against the New York City Police. On the contrary, CORE has repeatedly complimented the New York City Police force when circumstances suggested that such compliments were in order. CORE had, however, become aware, as had every other responsible civic group that in many areas of the city, particularly in the Negro ghettos, communications between the police and the citizens had ceased. The general attitude of the citizens was that the police, mainly White, could be expected to use violence without provocation. Further, instead of regarding the police as supporters of the law and as potential friends, the residents of these sections regarded the police as enemies and potential enemies likely to make unprovoked attacks. CORE had repeatedly made efforts to advise responsible city officials of the seriousness of the situation. CORE had further made suggestions, through various chapters, as well as through national representatives, that precincts in these sections make an effort to reach a better understanding with the citizens.

CORE found the police department unresponsive to these demands and constructive suggestions. On the contrary, CORE received an increasing number of complaints of police brutality. These complaints ranged from unsubstantiate report to instances fully supported by extrinsic evidence. In an effort to demonstrate the necessity and the utility of a civilial review board, CORE entered on two programs. The first consisted of the establishment of a board of reputable, and indeed famous, New Yorkers including James Farmer, Roger Baldwin, . This board heard two complaints on -------------. The presentation made by William Ellis, an attorney, was judicial in character. It resulted not in a finding of culpability on the part of the police but in a statement by the eminent citizens forming the board supporting the utility and indeed necessity of a civilian review board.

The other program consisted of a definite, although informal, procedure by means of which chapters were encouraged to present complaints of police brutality promptly upon the occurrence to the National office. The National office, in turn, furnished attorneys to investigate the incidents with a view to encouraging remedial action by responsible public officials. Betweenthe time this system was established and July 16, three incidents were processed. Of these, the CORE attorney assigned disposed of two on the ground that police brutality was not involved. In the third instance, the CORE attorney called upon the District Attorney of New York

County and the Civilian Complaint Bureau of the Police Department to make immediate investigation. While these investigations, which were carried out, did not result in criminal complaints, general agreement was reached that specific police practices in the course of the occurrence had unnecessarily created ill feeling on the part of the community against the police. Definite recommendations with respect to police procedures in similar circumstances were made. In none of these three instances did CORE seek any sort of publicity. This was the result of a defnite decision on the part of CORE that, in order to achieve the objective of creating a better dialogue between the police and the community, it was preferable to deal with the situation on an internal level and in a relationship of mutual confidence rather than attempting to secure ~~from~~ for CORE public recognition for the role it was seeking to play.

It is worth noting that, therefore, the procedures which were utilized for the investigation of the Gilligan case had been fully established by CORE long before. The very existence of these procedures had in no way been publicized but was known to responsible public authorities and to CORE chapters.

When the racial content, or potential racial content of the Gilligan incident was reported, it was therefore automatic that CORE should investigate the case in depth. The fact that a large number of children at the Wagner Junior High School had become greatly incensed by the incident and that there was an immediate response by large numbers of people in Harlem reinforced CORE's determination to investigate; but the investigation would have taken place in the form it ultimately took without these additional stimuli.

The principles upon which the CORE investigation was undertaken were several. The investigators were instructed to find out the truth. At all stages, objectivity was stressed. A sincere effort was made to discover evidence favorable to Gilligan, albeit he himself refused to be interviewed. No inference may be drawn from this refusal since any prudent attorney would have advised him that he had little to gain and potentially something to lose thereby. Obviously, Gilligan was under no compulsion whatsoever to cooperate with CORE's investigation. It is unfortunate in the extreme that the police generally saw fit not to cooperate with the CORE investigation. For this refusal there is neither justification nor reason. The point is that CORE, in seeking to serve the community as a whole, would have been as successful in finding Gilligan wholly blameless as in finding him blameworthy. It is the conclusion of the investigators that Gilligan was at fault, that a boy of 15 was needlessly killed by a mature policeman. To reach this conclusion was in no sense the purpose of this investigation. If the investigation may be said to have a purpose other than merely to establish the truth it was to prevent the Gilligan case from being white-washed, ignored or otherwise swept away in the multifarious business of the great city.

From the outset, the CORE investigation proceeded in close contact with the more or less simultaneous investigations of the District Attorney of New York County and the Civilian Complaint Bureau of the Police Department. Indeed, CORE furnished a number of witnesses to the District Attorney for presentation to the grand jury and it was CORE's complaint which caused the Civilian Complaint Bureau investigation. The CORE investigators were, for several weeks, in almost daily contact with the District Attorney's office. Because of the proprieties involved in the grand jury procedure, it was necessary to withhold witnesses from the civilian complaint bureau until they had appeared before the grand jury. Nevertheless, CORE encouraged the Cvilian Complaint Bureau Investigation and undertook to aid it within the limits of the legal proprieties. In this context it must be particularly born in mind tht although the Civilian Complaint Bureau has at its disposal the vast apparatus of city government, its status is entirely unofficial just as is the status of CORE. The Civilian Complaint Bureau has no subpoena power, nor any right to require an unwilling witness to testify; nor does it have any right whatsoever to interfere with, anticipate or otherwise impede the only legitimate, official investigation, that of the grand jury. After certain initial false start, CORE is satiafied, the Civilian Complaint Bureau acted with entire propriety, even though it is a branch of the Police Department.

The CORE investigation was carried out under direction of George Schiffer, an assistant general counsel of CORE. He was assisted by members of his own staff as well as by the Harlem group of the Law Student Research Council, under leadership of James Finney. At various times, other attorneys also gave their time. In addition, half a dozen volunteer secretaries were utilized. From start to finish, the investigation occupied the time of approximately fifteen people, in addition to members of the East River, New York and Bronx CORE chapters who greatly assisted in finding witnesses. CORE investigation was, therefore, not cursory nor understaffed.

In the interrogation of witnesses, great care was taken to elicit the truth. Witnesses were interrogated in places not conducive to create tension. School children were invited to have their parents attend and some of them did so. Great care was taken not to suggest facts or testimony to witnesses. Cross-examination was gentle, particularly until the witnesses had been interrogated by the District Attorney and the grand jury. In some cases, witnesses were questioned more than once to test their stories and to clarify particular facts. The endeavour was to determine the facts without/in any way coaching the witnesses or depriving the District Attorney of an opportunity to get as fresh a story as possible. Most of the witnesses x examined had previously given statements to the police and the district attorney. Some of these witnesses were kept at the 19th precinct for periods ranging to ten hours. During this time, they were questioned by two or three teams of policemen x as well as by the District Attorney . To the extent that the stories of these witnesses were suceptible of change, therefore, the change had already occurred before CORE saw the witnesses. Certain witnesses were not questioned by CORE until after they had given testimony before the grand jury. This occurred only in the case of witnesses known to CORE before they testified to the grand jury and who were deliberately not questioned by CORE until afterwards, so as to avoid any implication that CORE might have had an impact on their testimony.

For obvious reasons, CORE refused to disclose the names of witnesses to the press. The necessity for this action was greatly regretted. Since, however, CORE was attempting to carry out an objective and serious investigation, it was decided that the disclosure of the names of witnesses might be construed as publicity seeking or as interference with the grand jury process. Rather than to create the appearance of seeking to exploit the case for other purposes, the investigation limited itself to brief summary statements to reporters who approach the investigators. These statements were carefully objective, and related to the x incompleteness of the investigation. Only a few such statements were made and these were made in large part to secure from the reporters in question exchanges of information. No press conference whatsoever was held.

, have been in any way improper about a much more open attitude to disclosures of information to the public. On the contrary, in many situations, such disclosures would be the most proper precedure. The seriousness of the case, however, coupled with the great public tension surrounding it and the desire of CORE to do nothing which could be construed by the most hostile person as a improper suggested reticence as the safest course in this instance.

From the begining of the investigation, the preparation of a complete report was contemplated. This report is the result. It was prepared cooperatively by those who had taken the leading in the investigation. Several people, in no case less than three, read the transcripts of each interview tape-recorded during the investigation (and all witnesses interviewed were tape-recorded). In some cases, when discussion disclosed doubts as to the testimony of a particular witness, additional interviews were conducted at this stage. The group discussed the testimony of each witness, coming to a conclusion as to content, credibility and possible points of conflict with the testimony of other witnesses. The points of conflict were then resolved by comparison, re-interview and similar technics. Finally, the evidence was written as a composite story whch forms the body of this report. In the course of this procedure, it was determined not to disclose the names of witnesses, many of whom are minors. Each witness is, however, identified by symbol and a supporting tape-recording and transcripts are in the files of CORE. As far as possible, an effort has been made to point out items of evidence believed to be in existence but not available to CORE.

The objective of the investigation was at no time to determine the guilt or innocence of Gilligan, an issue which under our system can only be settled by a trial court. The specific question to which the investigation was addressed was, whether there was sufficient evidence to justify the suspension and arrest of Gilligan or, to put it another way, whether there was sufficient evidence to require thatGilligan stand trial. CORE has concluded unequivocally that such evidence exists.

1. THE LEGAL FRAMEWORK : The shooting of a citizen by a policeman under any circumstances is an incongruous event. In an era of mass violence most people are too ready to accept as inevitable the death of one person . In our statistical minded way, we think of 40,000 automobile deaths a year, New York murder a day, the potential toll of atomic war, massacres in the Congo,earthquakes in Alaska, mine disaster in Illinois and air-plane crashes in one incomprehensible statistical holocaust. We cannot assume the grief entailed by each of these deaths. News media tell us of violent death in each hour. John Donne's bell

never ceases. To think of it as tolling for each individual creates an intolerable burden of despair. Yet Mrs. Powell, three years widowed, has lost her only son.

In the final analysis, CORE, an organization dedicated to non-violence, is equally dedicated to the principle that violent death from any and all causes must be reduced and ultimately eliminated. CORE pepole have no extraordinary capacity to accept the burdens of others, nor are they do-gooders. CORE people are convinced that an existing, unhappy state is not permanently the lot the human race. CORE people are not unrealistic. If in its present form the automobile entails accidental death, the elimination of the automobile would entail still more deaths. But recognition of that fact suggests the adoption of safety devices and safety laws to reduce automobile deaths.

Similarly, ignoring the means, wants and griefs of individuals cannot lead to a better world. If circumstances require that in some conditions steps be taken which cause the grief of an individual, for the benefit of the society as a whole, those steps should not be taken unnecessarily. Nor should it be assumed that there cannot be other ways of dealing with the problem in the future so that it will no longer be necessary to cause grief to an individual.

If it is necessary now for policemen to x use force under some conditions, it should not be assumed that the present condition is a good one or that it will endure perpetually or even to the indefinite future. On the contrary, the public's easy acceptance of small violences tends to perpetuate them past any justification.

The history of Anglo-American law is the history of the development of a peaceful, secure society. This state has been achieved for a substantial part of our people for a substantial portion of the time. In times when there is no overt external war, the bulk of the population can have no reasonable expectation of meeting violent death. Even the substantial amount of crime which exists in this country today affects only a small fraction of the population and certainly cannot be compared with the risks of crime which affected the population even a hundred years ago. This improvement is by no means sufficient. The very existence of crimes of violence is evidence of the sickness of the society which must be cured.

For the poor, the underprivileged, there is a far smaller change in security than for the rest of the population. It may even be argued that the poor New Yorker today faces greater risk of violence than his counterpart a hundred years ago. One element in that violence is that arising from the police force.

The necessity of a police force in a metropolis like New York must be generally admitted. Plainly, that necessity does not speak well of the city. That New York has more policemen per unit of population than most other major cities suggests either that New York City government is less successful in its primary function of maintaining a peaceful environment for the citizen or that New York police are singularly inefficient. There does not appear to be any ~~a~~ rising curve of required police as the size of cities increases, an obvious but unfounded alternative. We do not suggest that the New York police are singularly inefficient. We do believe that the deliberate failure of New York city government over the past 20 years, and particularly over the past ten years of Wagner administration to deal with the major problems of the population has created a situation in which city government is a~~f~~ failure. As a function of that failure, the police department has been increased far more rapidly than any population increase. This is, in effect, an an attempt to substitute repression for constructive solutions of pressing problems.

This overall failure of the city, coupled with the increase in city police, housing police, transit police and other public force is reflected on the one hand in the attitude of those repressed and on the other hand in the attitude of the police.

The cop should be, and should be regarded as, the friend of the neighborhood, the gentle evidence of government available to prevent violence and to guard the laws. In large portions of the city, and particularly in those portions inhabited by the quarter of New York's population who are Negroes and Puerto Ricans, the policeman is unquestionably regarded as an ennemy. This is true whether the policeman is White or Negro.

This feeling of enemity is founded on facts, attitudes, impressions, hearsay, slander and blood. Many New Yorkers have hidden or overt prejudices against Negroes and Puerto Ricans. Policemen as New Yorkers are no exception. Policemen do behave differently towards Negroes, policemen do behave differently in Negro neighborhoods than they behave towards Whites or in white neiborhood. The fact that the majority of policemen are White, quite proper in a city which is 75% White, immediately makes the policeman an outsider and in many cases an ennemy. The policeman may not understand, or indeed particularly want to understand, the slang or the accent of Negroes or the language of Puerto Ricans. In a city where some 800,000 residents regards Spanish as their mother tongue, regreatably few policemen or indeed public officials of any kind, have even a rudimentary knowledge of that language. The lack of understanding on the linguistic level is readily transferred to lack of communication on a social plane. The policeman in Harlem is an outsider because he has little in common with the residents.

In turn, it appears to be the case tht the policeman in Harlem has no desire to find anything in common with the residents. The lack of communication breeds uncertainty, fear and hate in the outsider. The lack of ability to communicate breeds the desire not to communicate, psychologically, the compensation for the lack by the conclusion that the lack is an advantage. In such circumstances the use of insult and force are ready substitute for language.

Not only are not are all cops bad cops; most cops are good cops. This must be qualified by pointing out that most cops are good cops in circumstances they can understand. In Harlem, and in Bedford-Stuyvesant,and in the East Bronx and in South Jamaica the White cop is at a serious disadvantage because in all probability, he cannot understand the attitudes or even the words of the residents. The experienced policeman, wholly turstworthy in a white neighborhood, may be totally unprepared in a Negro neighborhood. More, a tour of some extent may create and harden in him attitudes of the most dangerous kind to the maintenance of good public order.

The well known existence of corruption in the police force which any humane person can understand even if it cannot be condoned and the extension of this corruption in a hostile atmosphere inevitably create attitudes of mutual disrespect which add to an existing, dangerous situation.

The catalogue of factors destructive of good relations between police and Negroes in New York could be extended indefinitely. Brutality is the most important of those remaining undiscussed.

The term "police brutality" should be regarded as an undefined requiring definition. What is meant by it, by those who use it most, is conduct contrary to normal police usage involving over police acts from verbal indication of personal disrespect to incredible beatings administered without possibility of return violence to unnecessary killing. The white man wearing a coat and tie at any hour of the day or night can walk through New York City with little likelihood that he will be accosted by the police, much less that he will be stopped, arrested, manhandled or insulted. The white Bowery bum can expect, periodically, to be arrested as a drunk and processed through night court. The New York Negro seeing a policeman on a quiet street at night or having any contact with police in the daytime faces uncertainty as to whether he will be treated as a citizen or as a Bowery bum. Incidents in which Negroes are accosted by police under conditions justifying no contact whatsoever, subjected to racial epithets, searches, arrest, casual beating and the like are numerous beyond the comprehension of the average middle-class New York. To the

Negro affected, these incidents inevitably create a lasting impression of police hostility. The Negrow taken to a station house expects one or more blows without reasons; expects the prod of the nightstick without reasons; expects treatment as a second class citizen. The difficulty of securing Negro witnesses is overtly related to experiences which they had or which their friends are alleged to have had with policemen. To suggest that the depth of distrust which now exists among Negroes in New York has no foundation whatsoever is to live in a fantasy world. To accept all stories at face value is equally fantasmagorical.

The intensity and importance of the problem can hardly be overstated. This is one of the three or four main problems standing in the way of full participation of Negroes in New York's economic, social and political life. To suggest that New York can long afford to continue to misuse one fourth of its citizens is ridiculous. Every citizen of New York would benefit greatly if its Negro and Puerto Rican citizens could lead better lives. An adequate housing program would more than provide employment for every Negro and Puerto Rican desiring to participate in the construction industries. The spreading of the Negro population from its present ghettos to the city as a whole would improve business in every part of the city, including in the central district. Increased income for Negroes would entail increased income for all New York citizens, Indeed, increased income for Negroes and Puerto Ricans would entail decreased taxes for thne rest of the city. Better education for Negroes and Puerto Ricans would save the city many times the cost in everything from crime prevention, welfare payments to real estate taxes. These are, of course, not the primary grounds for taking these measures. Economic self-interest is but a limited basis for any action. These citizens of New York have a right to the improvement of their condition which is undisputable under our Constitution and laws. A primary step in tht direction is to provide these citizens with equal treatment, equal protectimn of the laws in the most basic sense: their relation with the police department.

Having allowed the deterioration of the relation between the police and the Negro and Puerto Rican communities, all New Yorkers should consider their own relation with the police department. Not ~~xx~~ all m ajor cities arm policemen with gun. Not all cities and not all police forces find it necessary to use guns in the suppression of mass action, even riots. The Tokyo riot of 1960, involving several hundred thousands people, did not require the firing of a single shot. The Tokyo police were able to contain and even terminate a riot by means of other devices. The London police do not carry guns. New York police regard the kind of firearms as essential to the public safety. They may be right. The issue is not the carrying of guns. The issue is, that New York supports an armed force of some 24,000 men, in addition to transit police, housing police and other armed bodies. The existence of these bodies and the carrying of firearms and billy clubs implies the probability of their use. This is in itself a situation too rarely given ~~thorough~~ thought. The Gilligan case resulted directly from the proposition that policemen, even when off-duty, should carry weapons in ~~prep~~ preparedness for the eventuality of their use. Even though policemen are trained in technics of personal defense without weapons, Gilligan used his weapon against a boy weighing little more than half as much as he. If Gilligan had not been prepared to use the weapon, if he had not been required to carry the weapon when off-duty, there would have been no shooting.

The law, the positive law, relating to such occurrences, is by no means wholly clear or satisfactory from a general standpoint. Law serves a function of providing minimum standards of conduct, guidelines in many cases rather than absolute requirements. Thus positive law neither can nor seeks to take into consideration the sociological and psychological factors that may indeed govern conduct in an actual situation. As far as possible, law sets objective benchmarks providing the possibility of objective judgments.

Our legal system surrounds the citizen with numerous safeguards, against interference by public authorities. Under normal conditions, arrest must be with a warrant, the charge of a crime must be based on an indictment by a grand jury, the trial must be by a judging jury, there must be appeals available, there are even Federal Court to review the actions of State Courts under some conditions. All of the safeguards are available to Gilligan. Powell is dead.

Under our law, the killing of a human being is a crime unless certain conditions can be established. An accident is one of those conditions. Killing in self-defense is another of those conditions, Where the amount of force necessary to kill was required to secure the safety of the defender and retreat was not further possible. To prevent a crime, it is permissible to use , similarly, an amount of xmx force sufficient for the purpose. Finally, a person entitled to make an arrest is entitled to use reasonable force for that purpose. A person who happens to be a policeman is not justified in committing a killing, because in his judgment such action may be desirable.

It is our conclusion that Gilligan had no justification for the killing of Powell.

As our discussion of the facts will show, Gilligan made no attempt to retreat but was in the act of advancing toward Powell when the shooting occurred. Consequently, self-defense cannot be a reasonable contention in this case.

The suggestion has been made that Gilligan was acting to prevent a crime. But it cannot be shown according to our view of the evidence, that Powell was in fact either committing a crime or attempting to commit a crime at the time he was shot. Incontrovertibly, Powell was never within 215 E., 76 St. At the time he was shot, he was moving away from the building. Nothing in the evidence suggests that he was at that point either committing a crime or attempting to commit a crime. The idea that, had he not been shot, he might have attempted to commit a crime at some subsequent point is irrelevant. There is, of course, no support for such an idea in any event. It must be understood, however, that the crucial issue is a very limited one. Someone leaving a building cannot be presumed to have committed a crime, merely out of that circumstance. The evidence is that Gilligan was not aware of any other circumstance. Nor can such a person be presumed to be about to attempt to commit a crime, even if the person is seen to be carrying a knife (the evidence being contrary to the idea that Powell was carrying a knife). Everything in our investigation points to the fact that if Gilligan had not intermened, nothing would have had happened, no crime would have been committed.

It is further to be borne in mind that the use of force is not permitted with respect to all crimes but only those crimes in which a person or property is seriously in danger. The circumstances led no credence to such condition.

The last possible ground justifying the use of force involves the argument that Gilligan was seeking to make an arrest. The witnesses indicate unequivocally that Gilligan had no point suggested anyone to believe, least of all Powell, that he was trying to arrest Powell. After Powell had been shot, Gilligan ~~is~~ is reported to have said to one witness that Powell ~~that~~ was Gilligan's prisoner. This does not, however, lend credence to the suggestion that anything was said supporting the idea of an arrest for an attempted arrest.

Of more significance is the fact that a police officer is permitted to make an arrest without a warrant only under limited circumstances. These circumstances include the commission of a misdemeanor in his presence or reasonable grounds that a felony has been committed, by the person to be arrested. In fact, Powell had committed no crime whatsoever. Consequently, there was no basis for a misdemeanor arrest. Even assuming that Powell had in his possession a knife, there is serious question whether Gilligan knew that fact until after the boy was dead. But the possession of a knife in itself is not a crime.

As to any reasonable belief concerning the commission of a felony, the circumstances are wholly against it. Gilligan, situated in the television shop, was in a position to observe the entire incident, both before and after Powell coming on to the scene. He made no effort whatsoever to intercede or to prevent the incident in the course of which various people threw objects at the superintendent Lynch. He therefore did not consider then that anyone was committing a crime. Powell's action in going to the door of 215 cannot be construed as a felony or as giving reasonable grounds to believe that a felony was being committed. In consequence, Gilligan had no basis for making any arrest. Indeed, had he made an arrest in the circumstances, the arrest would have been false and actionable.

Since a policeman's right to use any kind of force depends initially upon the establishment of one of the conditions previously mentioned, it follows that Gilligan had no right to use any force whatsoever in the circumstances. A policeman's fear, for example, of his mistake as to the identity of a person, provide no basis whatsoever for the use of force.

Further, if we are to assume that Gilligan had some justification for the use of force, the law is clear that the force employed must be proportionate to the circumstances. Thus we face initially the problem whether Gilligan had any right whatsoever to employ a firearm and secondly, whether Gilligan had any reason for firing more than a single shot.

As the discussion below explains in more detail, the area in which the scene was played is quite small. Thus Gilligan, when he left the television shop was not more than 15 feet from Powell, then leaving 215. The distance between them when the first shot was fired could not have exceeded six feet and was probably less. Gilligan weighs approximately 200 pounds. He has 16 years experience as a police officer. He has four citations for disarming armed criminal adults. Powell was 15. He weighed 122 pounds and was 5'6-1/2" tall. He was a small boy, not particularly adept physically or particularly strong according to the witnesses. Nothing in his previous history suggests either that he ever x attacked any person with any kind [illegible] of weapon, or that he would have attacked a policeman with a weapon of any kind.

The testimony is that Powell/(?) emerged with his gun drawn. The number of direct witnesses who saw this cannot be confuted. He carried the gun with elbow bent, the gun level and pointing forward. Thus, before he had any direct view of Powell or any alleged knife in Powell's hand, he was prepared to shoot. That the knife was not visible, if it existed at all, at any point previous to the actual shooting is borne out by the testimony of Lynch, who denies that he saw Powell with a knife.

Matching the reports of the various witnesses, it would appear that Gilligan must have approached Powell more rapidly than Powell approached Gilligan. Gilligan had a greater distance to travel from his point of departure to the place where he ended that did Powell by a factor of approximately 3 to 1 and it would appear that Powell left the door of 215 at virtually the same time that Gilligan left the door x of the television shop.

The evidence is, consequently that Gilligan, armed and ready to shoot was running toward Powell in a relatively constricted space allowing little room for evasion, stopping or retreat to either side.

Gilligan claims that he fired a warning shot. If so, no other warning could have been given. Certainly nothing was said of arrest. The point is is important in relation to the right to use fofce. To make an arrest without warning, is in itself questionable and in most cases xmx unlawful. If the person to be arrested is in the progress of an unlawful act he mustbe given the opportunity to cease. Similarly, the use of force must be justified by showing that there was no other alternative. The lack of a warning would militate against the necessary consideration of the alternative. Indeed, it must be borne in mind that it is the citizen who has the crucial right to desist from tht conduct which will expose him to the use of force. The law is for the protection of the citizens not the law enforcer. The citizen is presumed innocent. The citizen is presumed to be acting rightfully. The law enforcement official exists to protect the right of the citizen, even the citizen whose temporary aberration may require police action. The only testimony reports Gilligan as shouting "Hey you". The testimony unequivocally is that he did not put a police badge/until after the shooting.

Now the witnesses are clear that only three shotw were fired. Two bullets entered Powell, one of them passing through him. One bullet passed at waist level through the glass of the outer door of 215 and lodged in the woodwork frame of the inner door. Its path was slightly upward and slightly from right to left. This bullet creates several problems. If it was a warning shot, it was fired almost directly accosss the path of the boy, at waist level. As an excuse for so firing a warning shot, it might be said that there was no other place to fire it. Perforce we wonder why was it necessary to fire a warning shot at all. Why was the large policeman so frightened of the young boy, small as he was, that his immediate reponse was to fire? We further question whether the bullet did not in fact pass through the boy before entering the glass and the woodwork. The ballistic testimony on this point is by no means conclusive and indeed this bullet could well have passed through the boy.

The witnesses state that the first shot was not a warning shot at all, but hit the boy. The stopping power of a 38 Police Special is great. The witnesses are quite clear and ballistic would support them in stating that the first bullet caused the boy to fall.

With Gilligan holding the gun at waist level, there is considerable question which bullet was indeed the first bullet to strike the boy. The anatomical evidence is such as to make it possible that either entry wound was caused by the first bullet.

Gilligan has publicly stated that the first bullet that struck the boy struck him in the right forearm and then entered the chest. It is unquestionable that the striking impact of a .38 caliber bullet in the forearm would for practical purpose paralyse that member. If for example Powell had had a knife in his hand, the bullet would have caused him to drop it then and there.

There can be no question under the evidence of the witnesses that the first bullet to strike theboy (whether it was the first bullet fired or not) caused the boy to fall. The witnesses are then divided, whether the second bullet to strike the boy was fired while he was falling or after he had touched ground . This question bears more on the issue whether Gilligan is guilty of a crime than on the question, whether there is evidence to require Gilligan to stand trial.

The relevant question with respect to this report is why did Gilligan find it necessary, or, what justified Gilligan in firing the second shot to strike the boy? If indeed the first striking bullet caused him to fall, any further bullet would constitute excessive force, as we understand the law. Again, the relative size of the parties, the striking impact of a .38 and the surrounding conditions cause us to conclude that even if there was justification for the first striking bullet, there was no reason or justification for a further bullet.

If Gilligan's sequence of shots is accepted, it was the second striking bullet that caused death. Again, this issue should be left to a court. It is our conclusion that there was justification for none of the shots. It is our conclusion from the evidence that there is a substantial probability that the killing wound was the first bullet, contrary to Gilligan's statement.

A number of witnesses testified that the first shot fired struck Powell. The second shot was fired either after he had fallen or as he was falling. The third shot was fired after he was definitely down. We do not find objective testimony that unequivocally supports these contentions.

The charge was made further that, after the boy was definitely down , Gilligan used his foot to turn him over. This action was described by some as "kicking him over". There is no doubt that after the shooting, Gilligan touched the boy with his foot in some manner. We do not conclude that this fact is significant with respect to the issues. Nor do we conclude that by this touching Gilligan in any way to attempted to injure the boy further.

Thus it is our interpretation of the law and the facts as they have been made known to us by witnesses to the event that circumstances did not exist bringing into operation the legal justifications for the killing of one human being by another and that even if such circumstances might be assumed to have existed, Gilligan did not act within the limitations which the law places upon the exercise of force in those justificatory circumstances. Consequently we conclude that there is reason to believe that the killing of Powell by Gilligan occurred in circumstances raising ~~that~~ the reasonable belief that a crime was committed.

~~[illegible]~~

8/29/64 : GSO

DRAFT II

# THE GILLIGAN CASE

## Report of the Congress of Racial Equality *

On the morning of July 16, 1964, at approximately 930 AM, Lt. Thos. R. Gilligan, off-duty member of the New York City Police Department, shot and killed James Powell, citizen of New York City. Gilligan, aged 36, weighed 200 pounds. He had on at least four occasions disarmed adult criminals. Powell, aged 15, weighed 122 pounds. His height was 5 feet 6-1/2 inches. He was a Negro. Gilligan later charged ~~Powell~~ the boy attacked him with a pocket knife-

Gilligan shot three times and two of the bullets stuck Powell. When Powell had fallen to the sidewalk, Gilligan used his foot to turn the boy over. Powell was then still alive, but could not speak. The whole incident occupied perhaps thirty seconds.

The Killing occurred on a hot, sunny, Thursday morning, across east 76th street from Robert F. Wagner Junior High School. Powell had been taking voluntary summer classes there. About 15 of Powell's fellow students actually saw the shooting. Other students

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~~* This report was prepared under direction of George Schiffer~~

and saw

saw Powell fall, Gilligan turn him over. Still more students heard the shots and came running out. Several adult passers-by also ~~saw~~ witnissed the ~~x~~ killing.

By the time that an ambulance and police had arrived, several hundred students were on the street, in a hysterial mood. Reporters arrived.

Gilligan was impassive. While the first witnesses were still being interviewed, Gilligan went on "sick leave" and the

[through Assistant Chief Inspector Coyle] [within 24 hours]

Police Department issued a version of the killing exonerating him.

wit [illegible]

The violent death ~~of a boy is nothing extraordinary in New York City.~~ ~~Nor is~~ It is not it unusual for a policeman to shoot a citizen. ~~It happens almost every day.~~ Neither the law nor police department policy suggest clear ~~more than minimal~~ restraints on a policeman's use of force, or on a policeman's choice of force.

violent

On the contrary, the law ~~makes poss~~ permits a policeman

~~Powell and Gilligan had never met. Yet their confrontation had the inevitable outcome of the stockyard.~~

-2-

to shoot and kill a total stranger if the policeman reasonably suspects the stranger's conduct and the (over)

Innocent stranger fails to submit promptly. Essentially, that is what happened in this case. *

Powell was an only child. ~~Th~~ His father dies three years ago. Powell and his mother lived in a Bronx low cost Housing Project occupied almost exlusively by Negroes. Never poverty stricken in the terms of ~~Harlem~~ ghetto starvation, the family still remained in the lowest third of the city's ~~i~~ incomes. ~~Cleanliness and godliness were therefore part of the family, but not ease.~~

Powell had had minor trouble with the law. Once he was arrested for robbery and acquitted and Twice he was caught climbing over subway turnstiles to avoid paying the fare.

As a small, fatherless, ~~child~~ boy, Powell tried to establish himself as a happy-go-lucky type, always ready to lend his things, joking, laughing. He was not a leader. Occasionally, he had a fist fight. Usually he lost. He never fought much, never at all with weapons.

To his mother, Powell was all she had left since the death of her husband. Until the shooting, Mrs. Powell worked, except when she was sick. She has a bad heart.

Gilligan worked his way up as a cop with daring exploits.

At least two of these prior incidents occurred when he ~~x~~ was off-

Once

duty. ~~On one~~ he shot another Negro boy, allegedly to prevent his escape. Sixteen years on the police force, his rise to lieutenant was rapid and associated with violent episodes. These episodes obviously had the approval of Gilligan's superiors, since citations and promotions resulted.

There is no automatic procedure for review of police shootings. Homicide cases are investigated and presented to the grand jury. Policemen are rarely arrested, however, or even suspended pending investigation.

Just as Asst. Chief Inspector Coyle exonerated Gilligan

in

considering the evidence,

~~xx~~this case without ~~second thoughts~~, so policemen are very rarely called to answer for the use of violence. ~~When~~ Paid to use force in a society which regards the use of force as ~~unusual~~ undesirable, polcemen protect each other. ~~Paid to enforce law by a society whichdespises "finks", "stool pigeons" and law enforcement officials, police almost tradi-~~

~~to show that they had better be respected and obeyed~~

~~tionally~~ use force ~~as a support to their own morale.~~ Police object ~~Police morale and~~

to civilian ~~[illegible]~~ review because ~~they~~ fear it would ~~[illegible]~~ tend to break down ~~Police~~ mutual police protection of anti-social conduct, a police morale.

~~illegal use of force are often synonymous.~~ If permitted by public apathy, police engagement in illegal activities spreads rapidly, and deeply. The Denver scandal, the current New York scandal, the

Cincinnati scandal, the recurrent Chicago scandals come quickly to mind.

~~Obviously.~~ P~~p~~olice do not obey/or enforce the law as a matter of ~~[illegible]~~ course ~~general rule~~. They do so when well led, and when responsive to an alert public. ~~not otherwise.~~ Excessive use of violence by Police, especially against minority groups, is a symptom of a sick police force. The extent of police violence in New York is practically unknown. It shocks any dispassionate observer. This violence could not exist unless permitted by the highest police officials, including the up-from-the ranks commissioner.

Cutter

Consequently, on July 16, 1964, Gilligan had no incentive to avoid violence. Quite the contrary. As he said to a reporter, who asked why he could not have intervened before shooting became necessary, "I'm a lieutenant. I only do important things".

On the morning of July 16, Jimmie Powell got up to go to school. Not a particularly good student, he had decided that he would try to do better. His reading was particularly poor, so he enrolled in a remedial reading class at Wagner. The trip each way was almost an hour.

didn't work + make money

As the summer principal fondly points out, attendance at these classes is wholly voluntary. The students are given ~~an~~ a special incentive in the form of extra credit. Their motivation, however, is excellent. Students travel long distances to attend. No disciplinary problem exists. A majority of the students is Negro.

In the neighborhood, the story is a little different. East 76th, between Second and Third, is a quiet street with little traffic. A number of ethnic groups, Gemman, Hungarian, Irish, Czech, Austrian are found there. In recent years, new construction and renovation of brownstones has stopped the deterioration. Few Negroes live there.

~~In the bar at Third and 76th, the death of Jimmy Powell was taken as a kind of racial victory. People who have time to drink in them morning take their prejudices seriously.~~

Also, the summer students had caused a certain amount of trouble, They were noisy, ~~and~~ undisciplined on the streets ~~they raided grocery stores repeatedly.~~

In The neighborhood, the regulars, including (Janitor) Pat Lynch, did not like them.

Almost every day some of the ~~kids~~ students missed classes or came early for classes. They would gather on the streets, talking, flirting, doing what ~~middle~~ teen-agers do when assembled. In the ten days of summer session, this open-air social hall had become established.

In coming to school, the ~~kids~~ children tended to travel in small groups. For example, on July 16, ~~Carl and Cliff~~ two friends went to Jimmie Powell's house. Then all three took the bus.

Powell had acquired two pocket knives a few days earlier. ~~One of his pals~~ They were borrowed that morning by his two friends. ~~When Carl asked to borrow one, and succeeded, Cliff did the same.~~ who

Arriving at East 76th well before the next ~~xx~~ class, the boys joined a group of boys and girls already there. The three separated.

Across the street, Pat Lynch saw some boys on the stoop of 211 E. 76th Street, one of the two buildings for which he was janitor. He decided to spray the stoop, plants and ~~little~~ young trees then, although the job should have been finished earlier. Also, he did not like having these Negro kids eating on his stoop, messing it up.

He asked the students to move. After a few minutes, most did. One refused; Lynch turned the hose on the boy's face. Several kids shouted at Lynch. He turned the hose on them, boys and girls alike. One/was boy ~~thoroughly wetted~~ drenched. He began to throw objects taken from nearby garbage cans at Lynch. Lynch responded with the hose. The Powell boy joined the affray near the end, as Lynch, avoiding or struck by missiles, retreated into 215 E. 76th Street.

A "I'll wash the black off you"

The washing of ~~[illegible]~~ the student ~~The discomfi~~ture of Lynch ~~(or, the soaking of Ronald)~~ lasted only ~~a few minutes.~~ five or ten minutes ~~Certainly less than 10, possibly more than five.~~ It was accompanied by loud, profane remarks on both sides. Lynch did make racial remarks. Several witnesses reported Lynch had said, as he directed the hose at the students "I'll wash the black off you."

Those students who had been on the north side of East 76th split into three main groups: Those who joined their fellows on the south side, those who lounged against the south side of cars parked at the north curb and ~~those~~ a few who remained on the north side walk. Powell returned to the south side of the street.

At this time, Gilligan was in a television repair shop in 215 E. 76th, allegedly having a radio fixed. A relative of Gilligan's lives in the building and Gilligan formerly worked out of the 19th Precinct; but now in Bklyn 47. ~~but~~ no satisfactory or complete explanation of Gilligans' presence at this early hour, two blocks from his home and a boro away from his job has been made. He was no stranger to the repair shop.

Except for one witness, no one saw Gilligan during the hose incident. ~~discomfiture of Lynch~~. That witness alone claims Gilligan came from the ground floor (kitchen entrance) of 211 to take the hose away from Lynch. Correct or not, this detail matters little. Gilligan, off-duty, was inside when Lynch left the scene. ~~but Gilligan was close enough to observe~~. The shouting, garbage and bottle throwing and general disorder involving ~~as~~ a score of students did not cause Gilligan to make any arrest, ~~or take any~~

East 76th is a narrow street with narrow sidewalks. #211 is a 16 foot wide building. The repair shop and the entry to #215 are 16 feet wide together. The sidewalk is 12 feet deep. From the repair shop door, in the shop's middle, to the #215 steps is 13 feet. From the front of the ~~st~~ low steps, ~~thence,~~ it is 7 feet to the door of the building. Thus the stage of action was the size of a modest bedroom.

no ¶ → #215 has a permanently locked inner door (as Gilligan would have known) and two outer half doors, one closed, one open.

Having reached the south side of the street, ~~Pwe~~ Powell joined his acquaintances. There was talk, about the Lynch incident, about other things. Powell talked to a couple of girls. Then he went to his friend ~~Carl~~ and asked for his knife back. The friend, ~~Carl,~~ who wanted to keep it for a while, said he could not find it. Powell then went to his other pal, ~~Cliff,~~ asked for, and got ~~obtained~~ his other knife. This was seen by ~~The~~ Two friends ~~Carl, Cliff~~ and one girl. No one apparently paid further attention to Powell, except one of the girls to whom he had been talking.

There is no question but that Powell wanted to discuss matters further with Lynch. None of the kids took this seriously. ~~Cliff and Carl, for example, went~~ None joined him.

Powell crossed to the north side of the street, about outside the repair shop. He moved quickly. Without pause, ~~Powell~~ he entered the double doors of 215, tried do open the inner door, found it locked, turned, took a step ~~out.~~

out. There he was shot the first time.

Gilligan came out of the repair shop at virtually the same time that Powell was turning to leave 215. He came with his gun drawn, pointed forward, at waist level. He did not wear a badge. He was dressed in a shirt and pants. As he ran the few steps to 215, he shouted, "Hey, you !". Almost at the same instant, one of the girls shouted "Look out, he's got a gun". The shots followed without interval.

Gilligan fired the first shot as he reached the first low step of 215. The second and third shots were fired in rapid sequence. These facts are ~~stated by~~ ~~reported~~ confirmed by numerous witnesses.

Gilligan says the first was a warning shot. The witnesses say the first shot took effect. Two bullets only were found, one at waist level in the inner door frame of 215, the other in the boy's chest. One bullet entered Jimmie's abdomen and passed out of his back ~~or vice versa~~. One bullet passed through his right forearm and into chest.

Gilligan says that Jimmie had a knife in his hand and was attacking him. Most of the witnesses ~~was~~ saw no knife in the boy's hand or were not in a position to see. One claims to have seen a closed knife in his hand. Lynch saw no knife, stated he was never attacked with a knife. Gilligan says he stopped at the base of the steps, identified himself as an officer, and gave warning. The witnesses say no.

The entire incident occurred with extreme rapidity, occupying only a few seconds. Gilligan, having more distance to cover, must have been moving approximately three times as fast as Powell. There was not time for Gilligan to stop or to identify himself, or to give warning. The pace of action and restricted space support the testimony contradicting Gilligan's story. ~~Although it is suggested that Gilligan stopped before he fired, this is inherently improbable and contradicted by witnesses.~~ The fair conclusion is that Gilligan and Powell were moving towards each other, Gilligan moving faster. If Powell was aware of Gilligan at all, it is entirely plausible to suppose that he thought himself under unprovoked attack by an armed stranger.

Some witnesses claim Powell's hands were at shoulder height, some that they were down, when he was shot. The former testimony is probably correct in view of the path of the bullet. The fair conclusion, then, is that Powell's hands were at about shoulder height when he was shot.

This tends to confirm that he either had no knife in his hand, threw the knife away in the gutter where it was found later, or was gesturing surrender. ~~The position of the hands is wholly inconsistent with a knife attack.~~ All of these alternatives are supported by different witnesses. No witness saw an attack, and the position of the hands will not support the hypothesis that there was an attack.

Powell had never seen Gilligan. Consequently, there was no ~~notice~~ motive for an attack. Similarly, there is every possibility that Gilligan shot Powell in the belief that he was another boy.

According to many witnesses, Gilligan shot from the hip as he came. It is suggested that the bullet found in the doorframe was a warning shot. If so, it was fired waist-high directly across the path of the boy. It passed through a pane of glass in the closed front half door and buried itself only to a depth of three fourths of an inch. It could well have passed through the boy, ~~xighkx~~ although the police ballistics expert does not think so.

The official version is that the second bullet ~~whxich~~ struck Powell's arm , then entered his chest. But Powell continued to attack. Therefore, in self defense, Gilligan shot again.

This story is contradicted by the witnesses and objective considerations. First, it assumes Gilligan to have halted, which he probably did not. Second, Gilligan used a .38 calibre revolver, a weapon with great stopping power. At close range, and the two cannot have been more than five feet apart, the shock of impact was tremendous. The impact exceeded a blow from a sledgehammer.

It is objectively unbelievable that a 122 pound boy, struck in the forearm and chest by a .38 calibre bullet could continue an attack.

The many witnesses confirm this conclusion. They ~~uniformly~~ say that the first bullet caused Jimmy to fall against a low railing and then further forward on his face. The second bullet, they say, struck him either as he was falling or after he had fallen. Further, the second bullet was fired immediately after the first

The objective evidence suggests that the second bullet entered the abdomen and exited the back from which it is concluded that the shot was fired as the boy was falling. Exit and entry wounds are sometimes confused, however.* Some witnesses, seeing Gilligan stand over the ~~g~~ fallen boy, gun pointing, may have thought he shot then.

~~*[note in this regard the allegedly erroneous reports of the Chief Dallas doctors regarding the Kennedy assassination]~~

Gilligan then turned the boy over onto his back with his foot. Several people ~~xxx~~ were within a few feet throughout the incident, but ~~Cliff~~ one of Powell's two pals ran across the street to reach Powell first. ~~Cliff~~ He saw that Jimmy was alive, and tried to talk ~~to~~ with him. But Jimmy could say nothing. ~~Cliff~~ He turned to Gilligan, asked him to get an ambulance. Gilligan then pulled out his badge, said "I'm a cop, he's my prisoner, you get the ambulance". That Gilligan first showed a badge after the shooting is confirmed by a number of witnesses.

Insert B

~~As Gilligan stood by the dying boy, more and more students came over, a hysterical mood growing.~~

INSERT A

It is now necessary to return to the moments before the shooting. The whole incident occurred so rapidly that exact recollection by witnesses cannot be expected. To understand the event it must be tested against various hypotheses.

What could have happened if Gilligan had not appeared? Probably nothing. Jimmy was leaving 215 when he was shot. He was acting alone, whatever he had in mind. Unable to enter the building, he can be assumed to have intended to go back across the street. Gilligan's interference therefore, was the causative fact of Jimmy;s death.

What, then, induced Gilligan to interfere? There is no evidence available to CORE which is decisive. Probably Gilligan saw Powell go to 215. If he heard him say anything, on the way, no one else did. This is very little to justify the ~~use of a~~ interference of a policeman, let alone with drawn gun.

Why did Gilligan have his gun levelled? Gilligan may have had a reason not apparent from the known facts. Gilligan's background and New York police practice suggest that Gilligan would have appreciated no reason *not* to draw his gun.

Why did Gilligan shoot? It is not certain that Powell was even aware of Gilligan. The whole incident was so rapid that Gilligan may have seen as an attack what was nothing at all, may have shot in reflex, error.

Why did Gilligan shoot more than once? Because he had taken a position, a sequence of actions had commenced. ~~Mxx~~ It is doubtful that, having begun, Gilligan had time to reflect. His training offered no alternative.

What was the effect of Powell's race? Had the same incident occurred across the street from P.S. 6, Powell would not have been shot. This conclusion rests on the strange features of the whole case, on the difference between police practice affecting whites and non-whites, above all on the willingness of New York police to use deadly force against Negroes.

The inescapable conclusion is that Gilligan knowingly shot a small boy in a hasty, probably unnecessary action. Gilligan's record of disarming adult criminals makes the present case even more incomprehensible than it would otherwise be. ~~except in terms of police department laissez-faire~~.

The law regarding use of force by policemen gives them great discretion. They use, indeed abuse, it. If a policeman acts to prevent a crime, he may use force. If a policeman believes a felony to have been committed, he may use force to prevent escape. In self-defense a policeman may also use force. The force is to be "reasonable". But deadly force may be used. The degree of force legally permissible is most obscure.

In this case, no crime was in fact being committed; but Gilligan may have thought the contrary. If he saw Powell try to enter 215, he might have been concerned. Of course, as a visitor to the building, he knew the inner door was locked. Yet, Gilligan could not have been acting to prevent a crime, since Powell was leaving 215 when shot. The claim of self- defense does not lie if Gilligan was running at the boy with drawn gun. More, to fire at least two bullets into boy transcends defense.

The conclusions of one person on such questions are not, however, the necessary conclusions of another. If the facts were that Powell had an open knife in hand; that Gilligan had grounds, as an officer to interfere; that Gilligan had stopped; that Gilligan audibly identified himself as a policeman and wore his badge; that Powell then attacked Gilligan, then, under present law Gilligan had a right to use force available to him. Powell's assumed knife was a deadly weapon. Thus a deadly weapon could legally be used in response.

This series of assumptions does not explain why more force than necessary was used.

This state of the law is obviously unsatisfactory. Policemen should not shoot boys half their size. Policemen should be trained to disarm. Policemen should be trained to use force only when absolutely necessary and then to use the least possible force.

Here Gilligan's readiness to shoot, directly ~~related to~~ laws which sanction such action, led to an unnecessary death. Had Gilligan not drawn his gun, had he sought simply to stop the boy, the probability is that no violence at all would have occurred. Had ~~this~~ forbearance entailed some risk to Gilligan, so be it. The police exist to protect citizens, not shoot them. No sympathy can be extended to a two hundred pound adult, professionally trained to force, who kills a small boy to avoid some personal risk. ~~The point is that~~ it did not matter to Gilligan if he shot or not and until police are taught not to shoot, New Yorkers willcontinue to be needlessly injured and killed for the alleged end of law and order.

A minor, indeed comic, street incident results in death. The occurrence is not unusual. Before and since the Gilligan case there have been others. The odds on every day greatly favor that a new incident will take place and that it will involve a Negro victim. The constitutional rights which surround a defendant mean little to the dead and maimed.

**INSERT A** Insert B

From the moment after the shooting, the problem of establishing what happened in those few seconds has occupied many people. The cenrtal part of the problem arises from the apparent contradiction of applicable legal principles.

~~INSERT B~~ Insert C

Every person is taught that a citizen is innocent, until proven guilty. But reasonable belief that a felony has been committed and that the suspect committed it, ~~an~~ or the reasonable belief that the suspect is committing a crime, permit a policeman to use force to effect an arrest or prevent the crime. The degree of force permitted must be reasonable. Deadly force must not be used except in felony cases, and even then it must be necessary. In practice, this means that a suspect, presumed innocent, may lawfully be killed by a policeman who has a reasonable, but erroneous belief as to the suspect's conduct. All the constitutional protections, the whole government of laws, not men, rides in the strained perceptions of a hurried policeman.

INSERT "B"

The Hogan report on the case sets forth the testimony of numerous witnesses. Some of that testimony confirms, ~~some~~ some contradicts Gilligan's own verson.

Gilligan' s story of warnings, efforts to stop the boy without shooting, and so on, is seriously defective. The restrictions of space and the ~~rapidly~~ rapidity of action militate against no sentence. Powell had no motive to attack. More, Gilligan claims Powell injured his hand. It was because of this injury that Gilligan says he shot.

On July 17, the Daily News printed two photographs of Gilligan, One showed his right hand bandaged. This comports with the ~~general~~ general hospital report of contusions to the right little finger. The second photograph shows the hand and the entire forearm bandaged. It is thus apparent that the larger bandage was deemed unnecessary by at least one doctor shortly after the incident. The Hogan report does not make the facts of Gilligan's alleged injury clear at all.

The Hogan report emphasizes a time lapse between the first and the two other shots. Many witnesses did not recollect such a lapse.

Most important, Gilligan's own ~~version~~ story does not explain why he had to use a gun at all against a small boy. Even if there was bare legal justification, Gilligan's conduct as a policeman should reflect a higher standard. More, having fired the first shot, how could the second have been necessary?

The chief corroboration of Gilligan comes from the repairshop man, who, admittedly, knew Gilligan. The Hogan report otherwise reports a great deal of contradiction. It is in discussing the applicable law that the Hogan report falters.

Insert C

To a large extent, the Hogan report states the law correctly. But the point of view is in error. The proper view should be to limit the use of force, especially deadly force, by the policeman. The Hogan report states that if there is a disorderly conduct, the policeman may kill if he is resisted. ~~It also urges that a policeman has no duty to retreat when.~~

In other words, a violation of law not even a crime can be escalated by a policeman to a situation in which be becomes judge, jury and executioner although he was the agressor. stet

Indeed, the Hogan report points out, the officer has no duty to retreat even if he can safely do so.

Quite to the contrary the law requires the policeman to bend every effort to bring the suspect before the court. There the suspect, even if found guilty, might ~~receive a~~ be sentenced to a small fine, to a few days in jail. ~~It~~ It is, therefore, wholly inappropriate to ~~use~~ kill ~~an~~ a suspect to prevent escape when the consequences of conviction would be negligible. While the applicable law is not as clear as it should be, it certainly does not encourage killing in situations precipitated by the officer himself.

~~The Outcome~~

Ⓐ The outcome of the Gilligan case demonstrates the weakness of the law to deal with police violence.

More, the policeman may use force to defend himself, as any man. But the policeman may go further. The policeman may be the agressor, attempting a capture. If the suspect resists the ~~[counter attack?]~~ agression or counter-~~x~~attacks, the policeman is deemed assaulted and may use deadly force. This is sheer boot-strapping. The policeman's ~~has a~~ duty to use no more force than necessary and to avoid killing if possible, ~~These factors~~ are difficult to ~~treat~~ assess objectively. The use of the very powerful .38 calibre pistol itself imparts the risk of death from any ~~one~~ single shot; ~~is~~ yet the gun is standard.

The special privileges of the policeman to use force may be seen to depend on the suspect's recognizing his assailant as a policeman. If an ordinary citizen sought to interfere with the suspect in most of these situations, the suspect would have every right to resist. Only insofar as the citizen has a duty to respond to public authority to answer charges against him does he have a duty to submit to a policeman. The right of the policeman to use force depends on an overt breach of that duty.

If, therefore, the policeman does not identify himself as such, the citizen has no obligation to obey. Further, the principle that the policeman's use of force must be reasonable and necessary, imports the obligation on him to give warning. The law, then, contemplates a sequence of events before the use of force: the policeman's perception of circumstances authorizing his intervention, the identification and the warning, the perception of identifiation and warning by the suspect.

In the stroboscopic flicker of the event, such a sequence can easily abort.

The killing over, Gilligan became the suspect, entitled to all constitutional protection. His culpability must be proved beyond a reasonable doubt. In other words, Gilligan could kill on reasonable suspicion; but he is answerable only beyond a reasonable doubt. This dichotomy is the major weakness of the law: the permissive standards on the use of force & the absolute standard on its punishment.

It is plain that Powell did not in fact commit a crime justifying Gilligan to interfere with deadly force. Nor have facts been disclosed which suggest a ground of reasonable belief. If Gilligan had such belief, it could not have been based on the discomfiture of Lynch, an incident already terminated.

If Gilligan saw Powell run to 215, as may well have been the case, Gilligan knew the inner door to be locked, Indeed, as Gilligan faced Powell, the boy had already left 215. No crime was, therefore, in progress.

Gilligan could not, therefore, have been acting to apprehend a suspected felon or to prevent a crime. Gilligan may, indeed, have thought he was after some other boy, just as Powell ~~app~~ may have been unaware of Gilligan and any reason why Gilligan should accost him.

If Gilligan's story that Powell attacked him is believed, the question of self-defense arises. The evidence is preponderently that Gilligan was running at Powell.

The amount of force used has particular significance. Some ~~the~~ witnesses say Gilligan came out of the repair shop with drawn gun. Gilligan's reported testimony was not inconsistent. Next, the use of the gun by an experienced policeman who had disarmed four adults, against a 122 pound boy is significant. Finally, the firing of all three shots, or at least two shots, rapidly, is conclusive. In a close situation, a brief time, these circumstances negate a reasonable use of force or the use of a reasonable amount of force.

Gilligan, drawn gun, placed himself across the boy's only path away from 215 and shot. So much is undisputed. The entire incident occurred so rapidly that what Gilligan claims to have seen as Powell's attack was (perhaps) nothing. Gilligan, prepared to shoot, fired. Having taken a course of action, he fired again. Whether or not Gilligan is criminally or civilly culpable, there is no evidence to suggest that any crime would have been committed if Gilligan had not left the repair shop. That Gilligan felt free to use his gun at all in such ambiguous circumstances is the fundamental cause of Powell's death.

~~To a large extent,~~ The Hogan report ~~states the law correctly. But~~ takes an erroneous point of view of the law, even if many of the statements, in themselves, are correct. ~~the point of view is in error.~~ The proper view should be to limit the use of force, especially deadly force, by the policeman. The Hogan report states that if there is a disorderly conduct, the policeman may kill if he is resisted.

Indeed, the Hogan report points out, the officer has no duty to retreat even if he can safely do so. In other words, a violation of law not even a ~~crise~~ crime can be ~~escalated~~ transformed by a policeman is agression to a situation in which he becomes judge, jury and executioner. ~~although he was the agressor.~~

Quite to the contrary, the law requires the policeman to bend every effort to bring the suspect before the court. There the ~~suspect~~ suspect, even if found guilty, might be sentenced to a small fine, to a few days in jail. It is, therefore, wholly inappropriate to kill a suspect to prevent escape whem the consequences of conviction would be negligible. While the applicable law is not as clear as it should be, it certainly does not encourage killing in situations precipated by the officer himself. While the Hogan report may be technically correct, applied to some circumstances, it is misleading in the context of this case.

~~The outcome~~ so far ~~of the Gilligan case deomonstraates the weakness of the~~ law ~~to deal with police violen~~ce.

Obviously there are circumstances in which policemen must use force. Those circumstances are, however, limited by the fundamental consideration that the police exist to protect the citizen and to aid lawful process. ~~But~~

c Every person is taught that a citizen is innocent, until proven guilty. But reasonable belief that a felony has been committed and that the suspect committed it, or the reasonable belief that the suspect is committing a crime, permit a policeman to use force to effect an arrest or prevent the crime. The degree of force permitted must be reasonable. Deadly force must not be used except in felony, and even then ~~it~~ ~~might~~ must be necessary. ~~The use of deadly force~~ The right to use deadly force is not license to kill. In practice, ~~this mean that~~ the consequence of these rules is that a suspect, presumed innocent, may ~~lawfully~~ be killed by a policeman who has a reasonable, but erroneous belief as to the suspect's conduct. All the constitutional protections, the whole government of laws, not men, ~~rides~~ rides in the strained perceptions of a hurried policeman.

More, the policeman may use force to defend himself, as any man. But the policeman may go further. The policeman may be the agressor, attempting a capture. If the suspect resists the agression or counter-attacks, the policeman is deemed assaulted and may use deadly force without retreating. ~~This is sheer boot-strapping.~~ It is, however, sheer bootstrapping to suggest, as the Hogan report does, that a violation not authorizing deadly force may be coupled with resistance to permit killing. ~~[illegible]~~

The policeman's duties to use no more force than necessary and to avoid killing if possible are difficult to assess objectively.

It is highly undesirable ~~thus~~ to encourage shooting at minor offenders attempting to escape or resist arrest. ~~every traffic violator~~ ~~[illegible]~~

The use of the very powerful .38 calibre pistol itself imparts the risk of death from any single shot; yet the gun is standard. This circumstance again calls for restrictions on the policeman's right to shoot at all.

The special privileges of the policeman to use ~~froce~~ force may be seen to depend on the suspect's recognizing his assailant as a policeman. If an ordinary citizen sought to interfere with the suspect in most of these situations, the suspect would have every right to resist. Only insofar as the citizen has a duty to respond to public authority, to answer in court charges against him, does he have a duty to submit to a policeman. The right of the policeman to use force depends initially on an overt breach of that duty.

If, therefore, the policeman does not identify himself as such, the citizen has no obligation to obey. Further, the principle that the policeman's use of force ~~mst~~ must be reasonable and necessary, imports the obligation on him to give warning. The law, ~~thn~~ then, contemplates a sequence of events before the use of force: the policeman's perception of circumstances authorizing his intervention, the identification and the ~~awrning~~ warning, the perception of identification and warning by the suspect

In the stroboscopic flicker of the event, such a sequence can easily abort. If the policeman is not trained to avoid force to the last moment, but encouraged and protected in its use, reflex will cause shooting.

The killing over, Gilligan became the suspect, entitled to all constitutional protection. His culpability must be proved beyond a reasonable doubt. In other words, Gilligan could kill on reasonable suspicion; Could intervene in a situation involving no more than a child's bragadocio, could kill. But ~~his~~ he is answerable only beyond a reasonable doubt. This dichotomy is the major weakness of the law: the permissive standards on the use of force, the absolute standard on its punishment.

It is plain that Powell did not in fact commit a crime justifying Gilligan's ~~to interfere~~ interference, with deadly force. But if he had a reasonable belief that such a crime existed, he had a right to intervene. ~~Nor have facts been disclosed which suggest a ground of reasonable belief~~. If Gilligan had such belief, it could not have been based on the discomfiture of Lynch, an incident already terminated. If Gilligan saw Powell run to 215, as he claims, ~~may well have been the case~~, Gilligan knew the inner door to be locked; Indeed, as Gilligan faced Powell, the boy ~~had~~ was already ~~left~~ leaving 215. No crime was, therefore, ~~in progress~~ in progress. Gilligan could not, therefore, have been acting to apprehend a suspected felon or to prevent a crime. ~~Gilligan may, ;indeed,~~ At this point, law, discretion and good police practice would (over) would have suggested Gilligan stop, assess the situation, retreat if necessary to allow the boy access to the street, be certain Powell intended a crime. The immediate agressive response, the failure to retreat ~~may~~ made death inevitable. A side step, some words might have made it wholly unnecessary to shoot under any interpretation of the facts.

~~thought he was after some other boy, just as Powell may have been unaware of Gilligan and any reason why Gilligan should accost him.~~

If Gilligan's story that Powell attacked him is believed, the question of self-defense arises. The evidence is preponderently that Gilligan was running at Powell. Certainly Gilligan made no move to retreat although he could have done so. Powell may well have thought himself under attack. The Gilligan story, if true, does not explain the need to kill in self defense.

The amount of force used has particular significance. Some of the witnesses say Gilligan came out of the repair shop with drawn gun. ~~There was room for~~ [illegible] Gilligan ~~s~~ says he drew ~~it~~ ~~to have drawn~~ after coming out but before Powell faced him. ~~reported testimon was inconsistent. Next, the use of the gun by an experience policeman who had disarmed four adults, against a~~ In either event, Powell first saw Gilligan as an armed ~~122 pound boy is significant. Finally, the firing of all three shots,~~ stranger at close quarters. The readiness of the gun ~~or at least two shots, rapidly, is conclusive. In a close situation,~~ caused its use, whether or not there was an attack, not ~~a brief time, these circumstances negate a reasonable use of force or~~ the danger to Gilligan ~~of~~ not a half grown boy. ~~the use of a reasonalbe amount of force.~~

Gilligan, drawn gun, placed himself across the boy's only path ~~away from 215 and shot. So much is undisputed. The entire incident occurred so rapidly that what Gilligan claims to have seen as Powell's attack was perhaps nothing. Gilligan, prepared to shoot, fired.~~ :Having

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~~taken a course of action, he fired again~~. Whether or not Gilligan is criminally or civlly culpable, there is no evidence. to suggest that any crime would have been committed if Gilligan had not left the repair shop. That Gilligan felt free to use his gun at all in such ambiguous circustances ;is the fundamental cause of Powell's death.

The conclusions of one person on such questions are not, however, the necessary conclusions of another. If the facts were that Powell had an open knife in hand; that Gilligan had grounds , as an officer to interfere; that Gilligan had stopped; that Gilligan audibly identified himself as a policeman and wore his badge; that Powell then attacked Gilligan, then, under present law Gilligan had a right to use force available to him. Powell's assumed open knife was a deadly weapon. Thus a deadly weapon could legally be used in response. ~~This series of assumptions~~ ~~law to legality~~ ~~does not explain why more~~ deadly ~~force than necessary was used.~~

This state of the law is obviously unsatisfactory. Policemen should not shoot boys half their size. ~~Policemen should be trained to disarm. Policemen should be trained to use force only when albsolutely necessary and then to use the ;least possible force.~~

~~Hakd~~ Had forbearance entailed some risk to Gilligan, so be it. The police exist to protect citizens, not shoot them. No sympathy can be extended to a two hundred pound adult, professionally trained to use force, who kills a small boy to avoid some personal risk.

A minor, indeed comic, street incident results in death. The occurrence is not unusual. Before and since the Gilligan case there have been other~~s~~ police shootings in ambiguous circumstances. The odds on every day greatly favor that a new incident will take place and that it will involve a Negro victim. The constitutional rights which surround a ~~defendant~~ citizen mean little to the dead and maimed.

Sept. 2, 1964

## THE GILLIGAN CASE

### Report of the Congress of Racial Equality

On the morning of July 16, 1964, at approximately 9:30 A.M. Lt. Thomas R. Gilligan, off-duty member of the New York City Police Department, shot and killed James Powell, citizen of New York City. Gilligan, aged 37, weighed 200 pounds. He had, at least on four occasions, disarmed adult criminals. Powell, aged 15, weighed 122 pounds. His height was 5 feet 6-½ inches. He was a Negro.

Gilligan shot three times and two of the bullets struck Powell. When Powell had fallen to the sidewalk, Gilligan used his foot to turn the boy over. Powell was then still alive, but could not speak. The whole incident occupied perhaps thirty seconds.

The killing occurred on a hot, sunny, Thursday morning, across east 76th street from Robert F. Wagner Junior High School. Powell had been taking voluntary summer classes there. About 15 of Powell's fellow students actually saw the shooting. Other students saw Powell fall and saw Gilligan turn him over. Still more students heard the shots and came running out. Several adult passersby also witnessed the killing.

By the time that an ambulance ~~add~~ and police had arrived, several hundred students were on the street, in a hysterical mood. Reporters arrived.

Gilligan was impassive. While the first witnesses were still being interviewed, Gilligan went on "sick leave" and the Police Department, through Assistant Chief Inspector Coyle, issued a version of the killing ~~within 24 hours,~~ exonerating him.

It is not unusual for a policeman to shoot a citizen. Neither the law nor police department policy ~~suggest~~ place ~~clear~~ strong restraints on a policeman's use of force, or on a policeman's choice of force. On the contrary, the law is interpreted by the Hogan Report as permitting ~~permits~~ a policeman to shoot and kill a total stranger if the policeman reasonably suspects the stranger's conduct and the innocent stranger fails to submit promptly. Essentially, that is what may well have happened ~~in~~ in this case.

Powell was an only child. His father died three years ago. Powell and his mother lived in a Bronx low cost Housing Project occupied almost exclusively by Negroes. Never poverty stricken in the terms of ghetto starvation, the family ~~still~~ nevertheless remained in the lowest third of the city's incomes.

Powell had had minor trouble with the law. Once he was arrested for robbery and acquitted; ~~and~~ twice he was caught climbing over subway turnstiles to avoid paying the fare.

As a small, fatherless, boy, Powell tried to establish himself as a happy-go-lucky ~~lucky~~ type, always ready to lend his things, joking and laughing. He was not a leader. Occasionally, he had a fist fight. Usually he lost. He did not Fight ~~He never fought~~ much, never ~~at all~~ with weapons.

To his mothekx, kR Powell was all she had left since the death of her husband. Until the shooting, Mrs. Powell worked, except when she was sick. She has a bad heart.

Gilligan is unmarried. He worked his way up aa a cop with daring exploits. At least two of these prior incidents occurred when he was off-dut6. Once he shot another Negro boy, allegedly to prevent his excape. Sixteen years on the police force, his rise to Lieutenant was rapid and aasociated with violent episodes. These episodes obviously had the approval of Gilligan's superiors, sinne citations and promotions resulted.

On the morning of July 16, Jimmie Powell got up to go to school. Not

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a particularly good student, he had decided that he would try to improve ~~do better~~. His reading was particularly poor, so he enrolled in a remedial reading class at Wagner. The trip each way was almost an hour.

As the summer principal of Wagner fondly points out, attendance at these classes is wholly voluntary. The students are given special incentive in the form of extra credit. Their motivation, ~~however,~~ is excellent. Students travel long distances to attend. No disciplinary problem exists. A majority of the students is Negro.

In the neighborhood, the story is ~~a little~~ different. East 76th, between Second and Third, is a quiet street with little traffic. On the edge of Yorkville, a number of ethnic groups, German, Hungarian, Irish, Czech, Austrian are found there. In recent years, new construction and renovation of brownstones have ~~has~~ stopped the deterioration. Few Negroes live there. ~~Also,~~ The summer students had caused ~~caused~~ a certain amount of trouble. They were noisy ~~[illegible],~~ and undisciplined in the streets. In the neighborhood, the regulars, including janitor Pat Lynch, did not like them.

Almost every day some of the students missed classes or came early for classes. They would gather on the streets, talking, flirting, doing what teen-agers do when ~~assemabled~~ assembled. In the ten days of summer session, this open-air social hall had become established.

On the way ~~In coming~~ to school, the children tended to travel in small groups. For example, on July 16 two friends ~~who~~ went to Jimmie Powell's house. Then all three took the bus. Powell had acquired two pocket knives a few days earlier. They were borrowed that morning by his two friends. Arriving at East 76th well before the next class, the ~~boys~~ three joined a group of boys and girls already there and separated. ~~The three separated~~

Across the street, Pat Lynch saw some boys on the stoop of 211 East 76th Street, one of the two buildings for which he was janitor. He decided to spray the stoop, plants and young trees then, although the job should have been finished earlier. Also, he did not like having these Negro kids eating on his stoop, messing it up.

He asked the studnets to move. After a few minutes, most did. One refused; Lynch turned the hose on the boy's face. Several kids shouted at Lynch. He turned the hose on them, boys and girls alike. One boy was drenched. He ~~Part~~ and others began to throw objects taken from nearby garbage cans at Lynch. Lynch repsonded with the hose. The Powell boy joined the fray near the end, as Lynch~~, avoiding or struck by missiles~~, retreated into 215 East 76th Street. A pane of glass in the outer door of that building was broken by one of the missiles thrown after the Lynch.

The soaking ~~of the student~~ incident lasted only five or ten minutes. It was accompanied by loud, profane remarks on both sides. ~~and~~ Lynch did make ~~racial remarks. Several witnesses reported Lynch had said, as he directed the hose at the students "I'll wash the black off you."~~ comments, the most often quoted being, "I'm going to wash the black off you."

After Lynch entered 215, the ~~Those~~ students who had been on the north side of East 76th Street scattered. ~~split into three main groups; those who~~ Some joined their fellows on the south side, some ~~those who~~ lounged against the south side of cars parked at the north curb and a few ~~who~~ remained on the north side walk. Powell returned to the south side of the street.

At this time, Gilligan was in a television repair shop in 215 East 76th Street, allegedly having a radio fixed. A relative of Gilligan's lives in the building and Gilligan formerly worked out of the 19th Precinct. ~~He now works in Brooklyn.~~ No satisfactory or complete explanation of Gilligan's presence at this early hour, 60 blocks from his home a~~nd a bore away from his job~~ has been made. He was no stranger to the repair shop.

Ex~~cept for one witness, no one saw Gilligan during the hose~~

~~incident. That witness alone claims Gilligan came from the ground floor~~ (kitchen entrance) of 211 ~~to take the hose away from~~ ~~the ground floor~~ ~~Lynch. Correct or not, this detail matters little. Gilligan, off-duty, was inside when Lynch left the scene~~. The shooting, garbage and bottle throwing and general disorder involving a score of students did not cause Gilligan to make any arrest. The Hogan report suggests he deliberately avoided becoming involved.

East 76th Street is a narrow street with narrow sidewalks. 211 is a 16 foot wide building. The repair shop and the entry to 215 are 16 feet wide together. The sidewalk is 12 feet deep. From the repair shop door, in the shop's middle, to the 215 steps is 13 feet. From the front of the low steps it is 7 feet to the door of the building. Thus the ~~stage~~ stage of ~~action~~ action was the size of a modest bedroom. 215 has a permanently locked inner door (as Gilligan would have known) and two outer half doors, one closed, one open.

Having reached the south side of the street, Powell joined his acquaintances. There was talk, about the Lynch incident, about other things. Powell talked to a couple of girls . Then he went to his friend and asked for his knife back. The friend, who wanted to keep it for a while, said he could not find it. Powell then went to ~~his other~~ the second pal, asked for, and got his other knife. This was seen by the two friends and one girl. ~~KN~~ No one apparently paid further attention to Powell, except one of the girls to whom he had been talking.

There is no question but that Powell wanted to discuss matters further with Lynch. None of the kids took this seriously. None joined him.

Powell crossed to the north side of the street, about outside ~~the~~ the repair shop. He moved quickly. Without pause, he entered the double doors of 215, tried ~~his~~ to open the inner door, found it locked, turned, took a step out. There ~~was~~ he was shot for the first time.

Gilligan came out of the repair shop at virtually the same time that Powell was turning to leave 215. ~~He~~ ~~The~~ Witnesses say Gilligan came out with his gun drawn, pointed forward, at waist level. He did not wear a badge. He was dressed in a shirt and pants. As he ran the few steps to 215, he shouted, "hey, you!"

Gilligan says he left the store as Powell was coming around a parked truck to enter 215. ~~He~~ Many witnesses contradict this. Gilligan suggests that this happened immediately (over) after Lynch entered 215; but this could not be. There must have been an interval, if only to allow Powell to get his knife on the south side of the street. ~~In a way, Gilligan's version~~

~~Under Gilligan's version, time and space~~

Gilligan says that while Powell was between the doors of 215, in the instant before he turned to come out, Gilligan drew his gun, put on his badge, and verbally identified himself. Almost at the same instant as Gilligan's shout, one of the girls ~~shouted~~ yelled "Look out, he's got a gun". The shots followed without inte~~rual~~rval. Gilligan fired the first shot as he reached ~~the first low step of 215~~ a position in front of 215 blocking Powell's exit. The second and third shots were fired in rapid sequence. These facts are confirmed by numerous witnesses.

Gilligan says the first was a warning shot. The witnesses say the first shot took effect. Two bullets only ~~were found,~~ entered the boy. One bullet was found ~~one~~ at waist level in the inner door frame of 215, the other ~~in~~ in the boy's chest. One bullet entered Jimmie's abdomen and passed out of his back . One bullet passed through his right forearm and into his chest.

Gilligan says that Jimmie had a knife in his hand and was attacking him. He claims he tried to ward off Jimmie's first blow, had his hand injured, then shot. ~~Most~~ Many of the witnesses saw no knife ~~on~~ in the boy's hand or were not in a position to see. One claims to have seen a closed knife. Some claim to have seen ~~a knife~~ an open knife. Lynch saw no knife, stated he ~~was~~ was never attacked with a knife. ~~Gilligan says he stopped at the base of the steps, identified himself as an officer, and gave warning. The witnesses say no.~~

The entire incident occurred with such extreme rapidity, occupying only a a few seconds (from Gilligan's leaving the ~~FE~~ repair shop.) Gilligan having more distance to cover, must have been moving approximately three times as fast as Powell (if a number of witnesses are to be believed). There was no time for Gilligan to stop or to identify himself, or to give warning. The pace of action and restricted space support the testimony contradicting Gilligan's story. The fair conclusion is that Gilligan and Powell were moving towards each other, Gilligan moving faster. If Powell was aware of Gilligan at all, it is entirely plausible to suppose that he thought himself under unprovoked attack by an armed stranger. ~~The~~

Some witnesses claim Powell's hands were at shoulder height, some that they were down, when he was shot. The former testimony is probably correct in view of the path of the bullet. The fair conclusion, then, is that Powell's hands were at about shoulder height when he was shot.

This tends to confirm that he either had no knife in his hand, threw the knife away in the gutter where it was found later, or was gesturing surrender. All of these alternatives are supported by different witnesses. ~~No~~ Many witness ~~saw~~ ~~an~~ (state positively that there was no) attack, and the position of the hands ~~will~~ suggests that their recollection was correct. ~~not support the hypothesis that there was an attack~~.

Powell had never seen Gilligan. Consequently, there was no motive for an attack. ~~Similarly, there is every possibility that Gilligan shot Powell in the belief that he was another boy~~. According to many witnesses, Gilligan shot from the hip as he came. It is suggested that the bullet found in the doorframe was a warning shot. If so, it was fired waist-high directly across the path of the boy. It passed through a pane of glass in the closed front ~~hxf~~ half door and buried itself only to a depth of three fourths of an inch. It could well have passed through the boy, although the police ballistics expert does not think so.

The official version is that the second bullet struck Powell's arm, then entered his chest. But Powell continued to attack. Therefore, in self defense, Gilligan shot again. This is Gilligan's story, corroborated by some witnesses.

This story is contradicted by ~~the~~ witnesses and objective considerations. First, it assumes Gilligan to have halted, which he probably did not. Second, Gilligan used a .38 calibre revolver, a weapon with great stopping power. At close range, and the two cannot three to

have been more than five feet apart, the shock of impact was tremendous. The impact exceeded a blow fkrom a sledgehammer. It is pbjectively unbelievable that a 122 pound boy, struck 1in the forearm and chest by a .38 calibre bullet could continue an attack.

The very closeness of Gilligan and Powell suggests that the shooting was unnecessary. The disparity in age, size and training indicate that a single blow, delivered at close quarters, would have stopped Powell.

~~The~~ Many witnesses confirm ~~this conclusion. They say that the first bullet casued Jimmy to fall~~ that the first bullet to strike made Jimmy fall against a low railing and then further forward on his face. The second bullet, they say, struck him either as he was falling or after he had fallen. Further, the second bullet was fired immediately after the first. But the first caused such a grievous injury that the medical expert states it would have been fatal shortly. A continued attack was therefore most improbable and the firing of the second bullet casts doubt on the justification of the first. (over)

The objective evidence suggests that the second bullet entered the abdomen and exited the back, from which it is concluded that the shot was fired as the boy was falling. ~~Exist and entry wounds are sometimes confused, however.~~ Some witnesses, seeing Gilligan stand over the fallen boy, gun pointing, may have thought he shot then. The possibility remains that he did shoot after the boy was down.

Gilligan then turned the boy over onto his back with his foot. Although there is some contradictory testimony on this point, the weight favors that this happened.

Several people were within a few feet throughout the incident but one of Powell's two pals ran across the street to reach Powell first. He saw that Jimmy was alive and tried to talk to him. But

Some witnesses persist in stating that at least one bullet was fired after Powell was down.

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Jimmy could say nothing. He turned to Gilligan, asked him to get an ambulance. Gilligan then pulled out his badge, said "I'm a cop, he's my prisoner, you get the ambulance." That Gilligan first showed a badge after the shooting is confirmed by a number of witnesses. Gilligan, of course, contradicts.

The Hogan report on the case sets forth the testimony of numerous witnesses. Some of that testimony confirms, some contradicts Gilligan's own version. Gilligan's own story depends greatly on his claim to have been injured by ~~Pot~~ Powell. Gilligan appears to be supported by no witnesses on this point and is contradicted by several.

~~Gilligan's story of warnings, efforts to stop the boy without shooting, and so on, is seriously defective. The restrictions of space and the rapidity of action militate against it. Powell had no motive to attack. More, Gilligan claims Poell injured his hand. It was because of this injury that Gilligan says he shot.~~

On July 17, the Daily News printed two photographs of Gilligan, One showed his right hand bandaged. This comports with the ~~general~~ hospital report of contusions to the right little finger, treated by applying a splint. The second photograph shows the hand and the entire forearm bandaged. It is thus apparent that the larger bandage was ~~deeemed~~ deemed unnecessary by at least one doctor shortly after the incident. The Hogan report does not make the facts of

Gilligan's alleged injury clear at all. The diagnosis of July 16 mentioned no abrasions, that of July 17 did. Further, on July 17 the doctor found a sacroiliac injury not mentioned on July 16.

~~The Hogan report emphasizes a time lapse between the first and the XXXXXX two other shots. Many witnesses did not recollect such a lapse.~~

Insert over

~~Most impotant, Gilligan's own story does not explain why he had to use a gun at all against a small boy. Even if there was bare legal justification, Gilligan's conduct as a lpx policeman should refelct a higher standard. More, having fired the first shot, how couldk the second have been necessary?~~

~~The chief corroboration of Gilligan coms from the repairshop man, who, admittedly, knew Gilligan. The Hogan report otherwise reports a great deal of contradiction. It is in discussing the applicable law that the Hogan report falters.~~

~~From the moment after the shooting, the problem of establishing what happened in/thsse few seconds has occupied many people. The central part of the problem arises from the /apparent contradiction of applicable legal principles.~~

The Hogan report accurately reflects the contradictory state of the evidence. It fails to emphasize the most significant contradictions, the disparity of the opponents, the restrictions of time and place. The Hogan report does not spell out a case of crime against Powell or ~~Just~~ justification for Gilligan. ~~It contains ample~~ ~~It does not answer~~ That the grand jury could have believed Gilligan and his supporters is clear. That the grand jury could have approved the killing of a boy in these circumstance reflects the ambiguity of the applicable law, ~~especially in the~~

September 2, 1964

# THIS IS CORE'S REPORT ON THE GILLIGAN CASE

This report is the product of CORE's intensive investigation of Gilligan's slaying of James Powell. Commenced at the direction of general counsel Carl Rachlin within two hours after the event, the investigation was carried out by three attorneys and four law students. George Schiffer, assistant general counsel, was in charge. Jim Finney of Law Students Civil Rights Research Counsel coordinated the work of the students. The investigation is one of several undertaken in CORE's continuing program against police brutality.

More than twenty witnesses were interviewed in all, the investigators spent over two hundred hours. Five witnesses were discovered whom the district attorney had not been able to reach. The district attorney was also given the names and addresses of other witnesses who refused to be interviewed by CORE. Thus the CORE investigation made a substantial contribution to the district attorney's.

CORE concludes that Powell was shot needlessly. Even if Gilligan's story is believed, and many witnesses contradict it, CORE cannot understand how a highly trained, two hundred pound policeman found it necessary to shoot and kill a 122 pound boy at close range.

If this killing was not a crime, then the law and police department policy are at fault. If the law is as the Hogan report suggests, then a policeman who suspects a citizen's conduct is free to attack the citizen; if the citizen resists, the policeman may kill. But then the killer cannot be convicted, or even brought to public trial, unless a case against him can be proved beyond a reasonable doubt: proof that the suspicion had no reasonable basis, proof that the policeman used far more force than necessary.

In other words, the government of laws, not men, depends on the forbearance of a hurried policeman. He can turn a mildly comic street scene into a killing, a disorderly conduct into an execution.

In this case, Gilligan shot a half-grown boy twice with a very powerful gun. CORE is unalterably opposed to permitting or encouraging such action by police. The police in New York shoot far too many people. It is time to set positive restraints on the police use of weapons.

CORE's legal department is now preparing a study in depth of the New York law on police violence. This study will be presented to the New York legislature now considering a revised penal law.

There is alot of talk today about law and order. CORE wants law that applies to police killers, order that applies to whites as well as Negroes and justice that applies equally to all.

September 2, 1964

# THE GILLIGAN CASE

## Report of the Congress of Racial Equality

On the morning of July 16, 1964, at approximately 9:30 A.M., Lt. Thomas R. Gilligan, off-duty member of the New York City Police Department, shot and killed James Powell, citizen of New York City. Gilligan, aged 37, weighed 200 pounds. He had, on at least four occasions, disarmed adult criminals. Powell, aged 15, weighed 122 pounds. His height was 5 feet, 6-1/2 inches. He was a Negro.

Gilligan shot three times and two of the bullets struck Powell. When Powell had fallen to the sidewalk, Gilligan used his foot to turn the boy over. Powell was then still alive, but could not speak. The whole incident occupied perhaps thirty seconds.

The killing occurred on a hot, sunny, Thursday morning, across East 76th Street from Robert F. Wagner Junior High School. Powell had been taking voluntary summer classes there. About 15 of Powell's fellow students actually saw the shooting. Other students saw Powell fall and saw Gilligan turn him over. Still more students heard the shots and came running out. Several adult passersby also witnessed the killing.

By the time that an ambulance and police had arrived, several hundred students were on the street, in a hysterical mood. Reporters arrived.

Gilligan was impassive. While the first witnesses were still being interviewed, Gilligan went on "sick leave" and the Police Department, through Assistant Chief Inspector Coyle, issued a version of the killing exonerating him.

It is not unusual for a policeman to shoot a citizen. Neither the law nor police department policy place strong restraints on a policeman's use of force, or on a policeman's choice of force.

On the contrary, the law is interpreted by the Hogan Report as permitting a policeman to shoot and kill a total stranger if the policeman reasonably suspects the stranger's conduct and the innocent stranger fails to submit promptly. Essentially, that is what may well have happened in this case.

Powell was an only child. His father died three years ago. Powell and his mother lived in a Bronx low-cost Housing Project occupied almost exclusively by Negroes. Never poverty stricken in the terms of ghetto starvation, the family nevertheless remained in the lowest third of the city's income.

Powell had had minor trouble with the law. Once he was arrested for robbery and acquitted; twice he was caught climbing over subway turnstiles to avoid paying the fare.

As a small, fatherless boy, Powell tried to establish himself as a happy-go-lucky type, always ready to lend his things; joking and laughing. He was not a leader. Occasionally, he had a fist fight. Usually he lost. He did not fight much, never with weapons.

To his mother, Powell was all she had left since the death of her husband. Until the shooting, Mrs. Powell worked, except when she was sick. She has a bad heart.

Gilligan worked his way up as a cop with daring exploits. At least two of these prior incidents occurred when he was off-duty. Once he shot another Negro boy, allegedly to prevent his escape. Sixteen years on the police force, his rise to Lieutenant was rapid and associated with violent episodes. These episodes obviously had the approval of Gilligan's superiors, since citations and promotions resulted.

On the morning of July 16, Jimmie Powell got up to go to school. Not a particularly good student, he had decided that he would try to improve. His reading was particularly poor, so he enrolled in a remedial reading class at Wagner. The trip each way was almost an hour.

As the summer principal of Wagner fondly points out, attendance at these classes is wholly voluntary. The students are given special incentive in the form of extra credit. Their motivation is excellent. Students travel long distances to attend. No disciplinary problem exists. A majority of the students is Negro.

In the neighborhood, the story is different. East 76th, between Second and Third Avenues, is a quiet street with little traffic. On the edge of Yorkville, a number of ethnic groups -- German, Hungarian, Irish, Czech, Austrian -- are found there. In recent years, new construction and renovation of brownstones have stopped the deterioration. Few Negroes live there. The summer students had caused a certain amount of trouble. They were noisy and undisciplined in the streets. In the neighborhood, the regulars, including janitor Pat Lynch, did not like them.

Almost every day some of the students missed classes or came early for classes. They would gather on the streets, talking, flirting, doing what teen-agers do when assembled. In the ten days of summer session, this open-air social hall had become established.

On the way to school, the children tended to travel in small groups. For example, on July 16 two friends went to Jimmie Powell's house. Then all three took the bus. Powell had acquired two pocket knives a few days earlier. They were borrowed that morning by his two friends. Arriving at East 76th well before the next class, the three joined a group of boys and girls already there, and separated.

Across the street, Pat Lynch saw some boys on the stoop of 211 East 76th Street, one of the two buildings for which he was janitor. He decided to spray the stoop, plants and young trees then, although the job should have been finished earlier. Also, he did not like having these Negro kids eating on his stoop, messing it up.

He asked the students to move. After a few minutes, most did. One refused; Lynch turned the hose on the boy's face. Several kids shouted at Lynch. He turned the hose on them, boys and girls alike. One boy was drenched. He and others began to throw objects taken from nearby garbage cans at Lynch. Lynch responded with the hose. The Powell boy joined the fray near the end, as Lynch retreated into 215 East 76th Street. A pane of glass on the outer door of that building was broken by one of the missiles thrown after Lynch.

The soaking incident lasted only five or ten minutes. It was accompanied by loud, profane remarks on both sides. Lynch did make racial comments, the most often quoted being, "I'm going to wash the black off you."

After Lynch entered 215, the students who had been on the north side of East 76th Street scattered. Some joined their fellows on the south side, some lounged against the south side of cars parked at the north curb, and a few remained on the north sidewalk. Powell returned to the south side of the street.

At this time, Gilligan was in a television repair shot in 215 East 76th Street, allegedly having a radio fixed. A relative of Gilligan's lives in the building and Gilligan formerly worked out of the 19th Precinct. No satisfactory or complete explanation of Gilligan's presence at this early hour, 60 blocks from his home, has been made. He was no stranger to the repair shop. The shouting, garbage and bottle throwing and general disorder involving a score of students did not cause Gilligan to make any arrest. The Hogan Report suggests he deliberately avoided becoming involved.

East 76th Street is a narrow street with narrow sidewalks. 211 is a 16 foot wide building. The repair shop and the entry to 215 are 16 feet wide together. The sidewalk is 12 feet deep. From the repair shop door, in the shop's middle, to the 215 steps is 13 feet. From the front of the low steps it is 7 feet to the door of the building. Thus the stage of action was the size of a modest bedroom. 215 has a permanently locked inner door (as Gilligan would have known) and two outer half doors, one closed, one open.

Having reached the south side of the street, Powell joined his acquaintances. There was talk, about the Lynch incident, about other things. Powell talked to a couple of girls. Then he went to his friend and asked for his knife back. The friend, who wanted to keep it for a while, said he could not find it. Powell then went to the second pal, asked for, and got his other knife. This was seen by the two friends and one girl. No one apparently paid further attention to Powell, except one of the girls to whom he had been talking.

There is no question but that Powell wanted to discuss matters further with Lynch. None of the kids took this seriously. None joined him.

Powell crossed to the north side of the street, about outside the repair shop. He moved quickly. Without pause, he entered the double doors of 215, tried to open the inner door, found it locked, turned, took a step out.

There he was shot for the first time.

Gilligan came out of the repair shop at virtually the same time that Powell was turning to leave 215. Gilligan says he left the store as Powell was coming around a parked truck to enter 215. Many witnesses contradict this. Gilligan suggests that this happened immediately after Lynch entered 215; but this could not be. There must have been an interval, if only to allow Powell to get his knife on the south side of the street. Witnesses say Gilligan came out with his gun drawn, pointed forward, at waist level. He did not wear a badge. He was dressed in a shirt and pants. As he ran the few steps to 215, he shouted, "Hey, you!" Gilligan says that while Powell was between the doors of 215, in the instant before he turned to come out, Gilligan drew his gun, put on his badge and verbally identified himself. Almost at the same instane as Gilligan's shout, one of the girls yelled, "Look out, he's got a gun." The shots followed without interval. Gilligan fired the first shot as he reached a position in front of 215, blocking Powell's exit. The second and third shots were fired in rapid sequence. These facts are confirmed by numerous witnesses.

Gilligan says the first was a warning shot. The witnesses say the first shot took effect. Two bullets only entered the boy. One bullet was found at waist level in the inner door frame of 215, the other in the boy's chest. One bullet entered Jimmie's abdomen and passed out of his back. One bullet passed through his right forearm and into his chest.

Gilligan says that Jimmie had aknife in his hand and was attacking him. He claims he tried to ward off Jimmie's first blow, had his hand injured, then shot. Many of the witnesses saw no knife in the boy's hand or were not in a position to see. One claims to have seen a closed knife. Some claim to have seen an open knife. Lynch saw no knife, stated he was never attacked with a knife. The entire incident occurred with such extreme rapidity, occupying only a few seconds from Gilligan's leaving the repair shop. Gilligan, having more distance to cover, must have been moving approximately three times as fast as Powell, if a number of witnesses are to be believed. There was no time for Gilligan to stop or to identify himself, or to give warning. The pace of action and restricted space support the testimony contradicting Gilligan's story. The fair conclusion is that Gilligan and Powell were moving towards each other, Gilligan moving faster. If Powell was aware of Gilligan at all, it is entirely plausible to suppose that he thought himself under unprovoked attack by an armed stranger.

Some witnesses claim Powell's hands were at shoulder height, some that they were down, when he was shot. The former testimony is probably correct in view of the path of the bullet. The fair conclusion, then, is that Powell's hands were at about shoulder height when he was shot.

This tends to confirm that he either had no knife in his hand, threw the knife away in the gutter where it was found later, or was gesturing surrender. All of these alternatives are supported by different witnesses. Many witnesses state positively that there was no attack, and the position of the hands suggests that their recollection was correct.

Powell had never seen Gilligan. Consequently, there was no motive for an attack. According to many witnesses, Gilligan shot from the hip as he came. It is suggested that the bullet found in the door frame was a warning shot. If so, it was fired waist-high, directly across the path of the boy. It passed through a pane of glass in the closed front half door and buried itself only to a depth of three-fourths of an inch. It could well have passed through the boy, although the police ballistics expert does not think so.

The official version is that the second bullet struck Powell's arm, then entered his chest. But Powell continued to attack. Therefore, in self-defense, Gilligan shot again. This is Gilligan's story, corroborated by some witnesses.

This story is contradicted by witnesses and objective considerations. First, it assumes Gilligan to have halted, which he probably did not. Second, Gilligan used a .38 calibre revolver, a weapon with great stopping power. At close range, and the two cannot have been more than three to five feet apart, the shock of impact was tremendous. The impact exceeded a blow from a sledgehammer. It is objectively unbelievable that a 122 pound boy, struck in the forearm and chest by a .38 calibre bullet could continue an attack. The very closeness of Gilligan and Powell suggests that the shooting was unnecessary. The disparity in age, size and training indicate that a single blow, delivered at close quarters, would have stopped Powell.

Many witnesses confirm that the first bullet to strike made Jimmie fall against a low railing and then further forward on his face. The second bullet, they say, struck him either as he was falling or after he had fallen. Further, the second bullet was fired immediately after the first. But the first caused such a grievous injury that the medical expert states it would have been fatal shortly. A continued attack was, therefore, most improbable, and the firing of the second bullet casts doubt on the justification of the first. Some witnesses persist in stating that at least one **bullet** was fired after Powell was down.

The objective evidence suggests that the second bullet entered the abdomen and exited the back, from which it is concluded that the shot was fired as the boy was falling. Some witnesses, seeing Gilligan stand over the fallen boy, gun pointing, may have thought he shot then. The possibility remains that he did shoot after the boy was down.

Gilligan then turned the boy over onto his back with his foot. Although there is some contradictory testimony on this point, the weight favors that this happened. Several people were within a few feet throughout the incident, but one of Powell's two pals ran across the street to reach Powell first. He saw that Jimmie was alive and tried to talk to him. But Jimmie could say nothing. He turned to Gilligan, asked him to get an ambulance. Gilligan then pulled out his badge and said, "I'm a cop, he's my prisoner, you get the ambulance." That Gilligan first showed a badge after the shooting is confirmed by a number of witnesses. Gilligan, of course, contradicts.

The Hogan report on the case sets forth the testimony of numerous witnesses. Some of that testimony confirms, some contradicts Gilligan's own version. Gilligan's own story depends greatly on his claim to have been injured by Powell. Gilligan appears to be supported by no witnesses on this point and is contradicted by several.

On July 17, the Daily News printed two photographs of Gilligan. One showed his right hand bandaged. This comports with the hospital report of contusions to the right little finger, treated by applying a splint. The second photograph shows the hand and the entire forearm bandaged. It is thus apparent that the larger bandage was deemed unnecessary by at least one doctor shortly after the incident. The Hogan Report does not make the facts of Gilligan's alleged injury clear at all. The diagnosis of July 16 mentioned no abrasions; that of July 17 did. Further, on July 17 the doctor found a sacroiliac injury not mentioned on July 16.

The Hogan Report accurately reflects the contradictory state of the evidence. It fails to emphasize the most significant contradictions, the disparity of the opponents, the restrictions of time and space. The Hogan Report does not spell out a case of crime against Powell or justification for Gilligan. That the Grand Jury could have believed Gilligan and his supporters is clear. That the Grand Jury could have approved the killing of a boy in these circumstances reflects the ambiguity of the applicable law.

The Hogan report takes an erroneous point of view of the law, even if many of the statements, in themselves, are correct. The proper view should be to limit the use of force, especially deadly force, by the policeman. The Hogan report states that if there is a disorderly conduct, the policeman may kill if he is resisted. Indeed, the Hogan report points out, the officer has no duty to retreat even if he can safely do so. In other words, a violation of law not even a crime can be transformed by a policeman's agression to a situation in which he becomes judge, jury and executioner.

Quite to the contrary, the law requires the policeman to bend every effort to bring the suspect before the court. There the suspect, even if found guilty, might be sentenced to a small fine, to a few days in jail. It is, therefore, wholly inappropriate to kill a suspect to prevent escape when the consequences of conviction would be negligible. While the applicable law is not as clear as it should be, it certainly does not encourage killing in situations precipitated by the officer himself. While the Hogan report may be technically correct, applied to some circumstances, it is misleading in the context of this case.

Obviously, there are circumstances in which policemen must not use force. Those circumstances are, however, limited by the fundamental consideration that the police exist to protect the citizen and to aid lawful process. Every person is taught that a citizen is innocent, until proven guilty. But reasonable belief that a felony has been committed and that the suspect committed it, or the reasonable belief that the suspect is committing a crime, permit a policeman to use force to effect an arrest or prevent the crime. The degree of force permitted must be reasonable. Deadly force must not be used except in felony, and even then it must be necessary. The right to use deadly force is not license to kill.

In practice the consequence of these rules is that a suspect, presumed innocent, may be killed by a policeman who has a reasonable, but erroneous, belief as to the suspect's conduct. All the constitutional protections, the whole government of laws, not men, rides in the strained perceptions of a hurried policeman.

More, the policeman may use force to defend himself, as any man. But the policeman may go further. The policeman may be the agressor, attempting a capture. If the suspect resists the agression or counter-attacks, the policeman is deemed assaulted and may use deadly force without retreating. It is, however, sheer bootstrapping to suggest, as the Hogan report does, that a violation not authorizing deadly force may be coupled with resistance to permit killing. It is highly undesirable thus to encourage shooting at minor offenders attempting to escape arrest.

The policeman's duties to use no more force than necessary and to avoid killing if possible are difficult to assess objectively The use of the very powerful .38 calibre pistol itself imparts the risk of death from any single shot; yet the gun is standard. This circumstance again calls for restrictions on the policeman's right to shoot at all.

The special privileges of the policeman to use force may be seen to depend on the suspect's recognizing his assailant as a policeman. If an ordinary citizen sought to interfere with the suspect in most of these situations, the suspect would have every right to resist. Only insofar as the citizen has a duty to respond to public authority, to answer in court charges against him, does he have a duty to submit to a policeman. The right of the policeman to use force depends initially on an overt breach of that duty

If, therefore, the policeman does not identify himself as such, the citizen has no obligation to obey. Further, the principle that the policeman's use of force must be reasonable and necessary, imports the obligation on him to give warning. The law, then, contemplates a sequence of events before the use of force: the policeman's perception of circumstances authorizing his intervention, the identification and the warning, the perception of identification and warning by the suspect. In the stroboscopic flicker of the event, such a sequence can easily abort. If the policeman is not trained to avoid force to the last moment, but encouraged and protected in its use, reflex will cause shooting.

The killing over, Gilligan became the suspect, entitled to all constitutional protection. His culpability must be proved beyond a reasonable doubt. In other words, Gilligan could kill on reasonable suspicion; could intervene in a situation involving no more than a child's bragadoccio; could kill. But he is answerable only beyond a reasonable doubt. This dichotomy is the major weakness of the law: the permissive standards on the use of force, the absolute standard on its punishment.

It is plain that Powell did not in fact commit a crime justifying Gilligan's interference with deadly force. But if he had a reasonable belief that such a crime existed, he had a right to intervene. If Gilligan had such belief, it could not have been based on the discomfiture of Lynch, an incident already terminated. If Gilligan saw Powell run to 215, as he claims, Gilligan knew the inner door to be locked. Indeed, as Gilligan faced Powell, the boy was already leaving 215. No crime was, therefore, in progress Gilligan could not, therefore, have been acting to apprehend a suspected felon or to prevent a crime. At this point, law, discretion and good police practice would have suggested Gilligan stop, assess the situation, retreat if necessary to allow the boy access to the street, be certain Powell intended a crime. The immediate agressive response, the failure to retreat made death inevitable. A side step, some words might have made it wholly unnecessary to shoot under any interpretation of the facts.

antly that Gilligan was running at Powell. Certainly Gilligan made no move to retreat although he could have done so. Powell may well have thought himself under attack. The Gilligan story, if true, does not explain the need to kill in self defense.

The amount of force used has particular significance. Some of the witnesses say Gilligan came out of the repair shop with drawn gun. Gilligan says he drew after coming out but before Powell faced him. In either event, Powell first saw Gilligan as an armed stranger at close quarters. The readiness of the gun caused its use, whether or not there was an attack, not the danger to Gilligan from a half-grown boy.

The conclusions of one person on such questions are not, however, the necessary conclusions of another. If the facts were that Powell had an open knife in hand; that Gilligan had grounds, as an officer, to interfere; that Gilligan had stopped; that Gilligan audibly identified himself as a policeman and wore his badge; that Powell than attacked Gilligan, then, under present law Gilligan had a right to use force available to him. Powell's assumed open knife was a deadly weapon. Thus a deadly weapon could legally be used in response.

This state of the law is obviously unsatisfactory. Policemen should not shoot boys half their size. Had forbearance entailed some risk to Gilligan, so be it. The police exist to protect citizens, not to shoot them. No sympathy can be extended to a two hundred pound adult, professionally trained to use force, who kills a small boy to avoid some personal risk.

A minor, indeed comic, street incident results in death. The occurence is not unusual. Before and since the Gilligan case place and that it will involve a Negro victim. The constitutional rights which surround a citizen mean little to the dead and maimed.

~~CORE, an organization dedicated to non-violence, refuses to accept the Grand Jury's verdict on the Gilligan cases as~~

There is a lot of talk today about law and order. CORE ~~seeks~~ wants law that applies to police~~men~~ killers, order that applies to whites as well as negroes and justice that applies ~~to all~~ equally to all.

# This is CORE's REPORT ON THE GILLIGAN CASE

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This report is the product of CORE's intensive investigation of Gilligan's slaying of James Powell. Commenced at the direction of general Counsel Carl Rachlin within two hours after the event, the investigation was carried out by three attorneys and four law students. George Schiffer, assistant general counsel, was in charge. Jim Finney of Law Students Civil Rights Research Counsel coordinated the work of the students. The investigation is one of several undertaken in CORE's continuing program against police brutality.

More than twenty witnesses were interviewed. In all, the investigators spent ~~was~~ over two hundred hours. Five witnesses ~~not otherwise~~ ~~[illegible]~~ ~~whom the police dis~~ ~~and directed~~ discovered whom the district attorney had not been able to reach. The district attorney was also given the names and addresses of other witnesses who refused to be interviewed by CORE. Thus the CORE investigation made a substantial contribution to the district attorney's.

~~That~~ ~~The public interest in the Gilligan Case is~~

CORE concludes that Powell was shot needlessly. Even if Gilligan's story is believed, and many witnesses contradict it, CORE cannot understand how a highly trained, two hundred pound policeman found it necessary to shoot and kill a 122 pound boy at close range.

If this killing was not a crime, then the law and police department policy are at fault. ~~The Hogan report suggests that a number of~~ If the law is as the Hogan report suggests, then a policeman who suspects a citizen's conduct is free to attack the citizen; if the citizen resists, the policeman may kill. But then the killer ~~of this [illegible]~~ cannot be convicted, or even brought to public trial, unless a ~~ca~~ case against him can be proved beyond a reasonable doubt: ~~a a~~ proof that the suspicion had no reasonable ~~p~~ basis, proof that the policeman used far more force than necessary.

In other words, the government of laws, not men, depends on the forbearance of a hurried policeman. He can turn a mildly comic street scene into a killing, a disorderly conduct into an execution.

In this case, Gilligan shot a half-grown boy twice with a very powerful gun. CORE is unalterably opposed to permitting or encouraging such action by police in New York. The police shoot far too many people. It is time to set positive restraints on the police use of weapons.

CORE's legal department is now preparing a study in depth of the New York law on Police violence. This study will be presented to the New York legislature, ~~study~~ [illegible] now considering a revised penal law.

8/29/64 GSO

# The Gilligan Case

## Report of the Congress of Racial Equality

On the morning of July 16, 1964 Lt. Thos. R. Gilligan, an off-duty member of the New York City Police Department, shot and killed James Powell, ~~resident and~~ citizen of New York City. Gilligan, aged 36, weighed 200 pounds. He had on four occasions disarmed adult criminals. Powell, aged 15, weighed 122 pounds. ~~He had no history of violence~~ His height was 5 feet 6 1/2 inches. He was a Negro. ~~Gilligan shot three till~~ Gilligan shot three times. Two of the ~~b~~ bullets ~~fired at~~ struck Powell. When Powell had fallen to the sidewalk, Gilligan ~~turned him over with~~ used his foot to turn the boy over. Powell was then still alive, but could not speak ~~to a friend who ran up~~.

The killing occurred on a hot, sunny ~~day~~ Thursday across ~~the street~~ east 76th street from Robert F. Wagner Junior High School ~~where~~. Powell had been taking voluntary summer classes there. ~~A large number~~ ~~of~~ About 15 ~~students~~ of Powell's fellow students actually saw the shooting. Other students saw Powell fall, Gilligan turn him over. Still more students heard

the shots and came running out. Several
adult passersby also saw the killing.

~~Within minutes~~
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By the time that an ambulance and police
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the street in a hysterical mood. Reporters
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~~news media~~

Within hours, the police department
issued a version of the ~~t~~ incident ~~which~~
~~neither the press nor the public believed.~~
~~The case outraged the public~~ ~~was an~~
~~Gilligan went on a "sick leave"~~, but was
~~not~~ suspended. A feeling of outrage
developed in Harlem.

Although citizens are shot by
policemen ~~every~~ nearly every day
~~The~~ ~~the Gilligan case and the public~~
with little public reaction, the Gilligan

(no ¶)

~~[illegible]~~

~~Within hours~~ While the first witnesses were still being interviewed, Gilligan went on "sick leave" and the Police Department issued a version of the killing exonerating him.

~~So~~ far the story differs in only minor detail from the frequent shootings of citizens by policemen to which ~~New Y~~ others have become accustomed, with one significant exception: the killing was seen by many people.

As a result of that exception, CORE was able to conduct an extensive ~~a~~ investigation. ~~a~~ So were ~~[illegible]~~ a number of reporters. This investigation leads inevitably to the conclusion that Gilligan should not have killed Powell. ~~Most importantly~~,

The most important aspect of the case, however, is that it is one of many ~~[illegible]~~ which happen, but one of the few which ever receives public attention. ~~[illegible]~~ To people frequently subject to police violence, the Gilligan case was a flagrant incitement. To the ~~public at large, it was~~ police it was just one more of a long list of normal occurrences. The public, inured by many police shootings, was at once ~~shocked by the incident~~ disturbed by the incident and by the special reaction of the Negroes. ~~The citizen~~ ~~The point is that all~~

To accept police violence as normal is to abjure constitutional government. The Gilligan case and hundreds of similar cases ~~present questions~~ ~~are not~~ ~~at~~ are not centrally concerned with criminal culpability. ~~The~~ The crucial point ~~is the p~~ for determination is, whether police practice tends to the lawful protection of liberty and property or ~~[illegible]~~ is contaminated with ~~psychosis, brutality and tyranny~~ excesses, ~~of pers~~ personally or officially motivated.

~~That~~ The use of force ~~in time of peace is~~

~~repugnant to many people~~ is repugnant. A society which depends ~~[illegible]~~ on force for sustenance is ~~[illegible]~~ wanting. The legal standard for the use of force ~~[illegible]~~ by police is a minimum standard. ~~rarely does law require more than~~ Only in unusual ~~circumstances~~ is the police officer criminally culpable.

This minimum standard is neither socially acceptable or morally justifiable; yet the ~~police~~ New York police regard themselves as free to use the maximum force which is not positively illegal. ~~In other words, relying on protecting each other, police tend to violate the minimum standard.~~ No official ~~[illegible]~~ regulation or teaching suggests to them a higher standard for duty.

New York does not approve of police shooting children. But New York has an armed police force which regards it as preferable to shoot a child suspected of stealing to allowing the child to escape.

~~Nothing in New York Police practice or regulation restrains the policeman's use of force. Bare compliance with the minimum standard is sufficient. Under some circumstances police are encouraged to use force and excessive force. The attitude of callous permissiveness has permeated deeply. Police [illegible] [illegible] are a law to themselves. The killing of a negro boy had no significance to Chief Coyle, [illegible] for example. [illegible] Police are persuaded of the need to use force and of their right to kill.~~

~~That~~ The Powell boy is dead ~~because~~ [illegible] a policeman shot him.

N

The violent death of a boy is nothing extraordinary in New York City. Nor is it unusual for a policeman to shoot a citizen — it happens almost every day. ~~The presence of many witnesses did not deter Gilligan. But this unusual circumstance brought this case~~

Neither the law nor police department policy suggest more than minimal ~~control~~ restraints on a policeman's use of force, or on a policeman's choice of force.

Powell and Gilligan had never met. Yet their confrontation had the inevitable ~~quality of the bullring~~ outcome of the stockyard.

Powell ~~[illegible]~~ was an only child. His father died three years ago. Powell and his mother lived in a Bronx Housing Project occupied almost exclusively by negroes. Never poverty stricken in ~~[illegible]~~ terms of Harlem starvation, the family still remained in the lowest third of incomes. Cleanliness and godliness were the real part of the family, but not spending ease.

Powell had minor trouble with the law. Once he was arrested for robbery and acquitted. Twice he was caught climbing over subway turnstiles to avoid paying the fare.

As a small, fatherless, child, Powell tried ~~was the type~~ to establish himself as a happy-go-lucky type, always ready to lend his things! joking, laughing. Occasionally he had a fist fight. Usually he lost. He ~~had~~ never fought much, never at all with weapons.

To his mother, Powell was all she had left since the death of her husband. Until the shooting, Mrs. Powell worked, except when she was sick. She has a bad heart.

Gilligan worked his way up as a cop with daring exploits. At least two of these prior incidents occurred when he was off-duty. On one he shot another Negro boy, allegedly to prevent his escape. ~~&~~ Sixteen years on the police force, his rise to lieutenant was rapid and associated with violent episodes.

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promotions resulted.

These episodes obviously had the
approval of Gilligan's superiors, ~~even though~~
~~the man~~ ~~[illegible]~~ ~~found had~~
Asst. Chief Inspector Coyle ~~had~~ ¶ Just as
Gilligan in this case without second
thought. So policemen are very rarely
called to answer for the use of violence.
Men paid to use force in a society which
regards the use of force as immoral, protect each other. ~~Paid to enforce law,~~ policemen
~~they are a law to them~~ Paid to enforce law
by a society which despises "finks" "stool
pigeons" and law enforcement officials,
~~Police~~ police almost traditionally ~~[illegible]~~ ~~seeks~~ ~~seek~~
~~justify~~ use force as a ~~means~~ to ~~secure~~
~~respect~~ support to their own morale.
Police morale and illegal use of force are
often synonymous. If permitted by public
apathy, police engagement in
illegal activities spreads rapidly
and deeply. The Denver ~~[illegible]~~ scandal,
the current New York scandal,
~~one~~ the Cincinnati scandal, the
recurrent Chicago scandals come

quickly to mind.

Obviously, police do not obey or enforce the law as a general rule. They do so when well led, when responsive to an alert public, not otherwise. The extent ~~and~~ of police violence in New York is practically unknown. It shocks any dispassionate observer. ~~This [illegible]~~ This violence could not exist unless permitted by the highest police officials, including the up-from-the-ranks Commissioner.

Consequently, on July 16 1964, Gilligan had no incentive to avoid violence. ~~He~~ ~~Said to a rep~~ Quite the contrary. As he said to a reporter, ~~a~~ who asked why he could not have ~~acted without~~ ~~violence~~ intervened before shooting became necessary, "I'm a lieutenant! I only do important things."

On the morning of July 16, Jimmie Powell got up to go to school. Not a particularly good student, he had decided that he would try to do better. ~~He therefore~~ His reading was particularly poor. So, ~~like~~ ~~be~~ enrolled in a remedial reading class at Wagner.

As the summer principal fondly points out, attendance at these classes is wholly voluntary. The students are given an incentive in the form of extra credit. Their motivation, however, is excellent. ~~No disciplinary problem exist~~ Students travel long distances to attend; no disciplinary problem exists. A majority of the students is Negro.

In the neighborhood, the story is a little different. East 76th, between Second and Third, is a quiet street with little traffic. A number of ethnic groups, German, Hungarian, Irish Czech, Austrian & are found there. In recent years, new construction and renovation of brownstones has stopped the deterioration.

Few negroes live there.

In the bar at Third and 76th the death of Jimmy Powell was ~~a kind~~ taken as a kind of racial victory. People who have time to drink in the morning take their prejudices seriously.

Also, the summer students had caused a certain amount of trouble. They were noisy, they ~~[illegible]~~ raided grocery stores repeatedly. ~~[illegible]~~ The neighborhood regulars, including Pat Lynch, did not like them.

Almost every day some of the kids missed classes or came early for classes. They would gather on the streets talking, flirting, doing what middle ~~[illegible]~~ teen-agers ~~do~~ when assembled. In the ten days of summer session this open-air social hall had become established.

In coming to school, the kids tended to travel in small groups. For example Carl and Cliff went to Jimmie Powell's house. Then all three took the bus.

Powell had acquired two pocket knives a few days earlier. When Carl asked to borrow one, and succeeded, Cliff did the same.

Arriving at East 76th well before the next class, the boys joined a group ~~ahead~~ of boys and girls already there. ~~They~~ The three separated.

Across the street, Pat Lynch saw some boys on ~~the~~ the stoop of 211, one of the two buildings for which he was ~~superintendent~~ janitor. He decided to spray the stoop, plants and little trees then, although the job should have been finished earlier. Also, he did not like having these negro kids eating on his stoop, messing it up.

He asked the students to move. After a few minutes, most did. One refused. Lynch turned the hose on the boy's face. ~~Ronald's reaction~~ Several kids shouted at Lynch. He ~~[illegible]~~ turned the hose on them, boys and girls alike. ~~Ronald and~~ One boy was thoroughly wetted. He began the throw objects taken from nearby garbage cans at Lynch. Lynch responded with the hose. The Powell boy joined the affray near the end, as Lynch, avoiding or struck by missiles, retreated into 215 E 76th St.

The discomfiture of Lynch (or, the soaking of Ronald) lasted only a few minutes, certainly less than 10, possibly more than five. It was accompanied by loud profane remarks on both sides. Lynch did make racial remarks.

Those students who had been on the north side of ~~[illegible]~~ East 76th split ~~[illegible]~~ into ~~[illegible]~~ 3 main groups: those who joined their fellows on the south

side, ~~and~~ those who bunched against
the south side of cars parked at the
North kerb, and those who remained
on the North sidewalk.)

~~Lynch away~~, Powell returned to
the south side of the street.

At this time, Gilligan was in a
Television repair shop in 215 E 76
allegedly having a radio fixed. A relative
of Gilligan's lives in the building, and
Gilligan formerly worked out of the
19th Precinct; but no satisfactory
a complete explanation of
Gilligan's presence has been made.
He was no stranger to the repair shop ~~the~~

Except for one
witness, no one saw Gilligan during
the discomfiture of Lynch. That
witness alone claims Gilligan came from the
ground floor (kitchen entrance) of 211 to

take the hose away from Lynch. Correct or not this detail matters little. Gilligan off duty, was inside when Lynch left the scene; but Gilligan was close enough to observe. ~~possibly~~ ~~close enough to hear the~~ ~~close enough to hear shouts~~

East 76th is a narrow street with narrow sidewalks. 211 is a 16 foot wide building. ~~The Th~~ The repair shop and the entry to 215 are 16 feet wide together. The sidewalk is twelve feet deep. From the repair shop door, in the shop's middle, to the 215 steps is 13 feet; thence it is 7 feet to the door of the building. Thus the stage of action was the size of a modest bedroom.

215 has a permanently locked inner door (as Gilligan would have known) and two entrance ~~doors~~ half doors, one closed, one open.

Having reached the south side of the street, Powell joined his acquaintances. There was talk, about the lynch incident, about other things. Powell talked to a couple of girls. Then he went to Carl and asked for his knife back. Carl, who wanted to keep it for a while, said he could not find it. Powell then went to Cliff, asked for and obtained his other knife. This was seen by Carl, Cliff and one girl. No one apparently paid further attention to Powell except one of the girls to whom he had been talking.

There is no question that Powell wanted to discuss matters further with Lynch. None of the kids took this ~~pa~~ seriously. None joined him.

Powell crossed to the north side of the street, about outside the repair shop. He moved quickly.

without pause, Powell entered the double doors of 215, tried to open the inner door, found it ~~too~~ locked, turned, took a step ~~beyond the double do~~ out. There he was shot the first time.

Gilligan came out of the repair shop at virtually the same time that Powell was turning to leave ~~#~~ 215. ~~This is the testimony~~ He came with his gun drawn, pointed forward, at waist level. He did not wear a badge. He was dressed in a shirt and pants. As he ran the few steps to 215, he shouted, "Hey, you!". Almost at the same ~~ts~~ instant one of the girls shouted, "Look out, he's got a gun!".

Gilligan fired the first shot as he reached the first low step of 215. The second and third shots were fired in rapid sequence.

Gilligan says the first was a warning shot. The witnesses say the first shot took effect. Two bullets only were found, one at waist level in the inner doorframe of 215, the other in the boy's chest. One bullet entered Jimmie's abdomen and passed out of his back or vica versa. One ~~p~~ bullet ~~entere~~ passed through his right forearm and into the chest.

Gilligan says that Jimmie had a knife in his hand and was attacking him. Most of the witnesses saw no knife in the boy's hand or were not in a position to see. One ~~se~~ claims to have seen a closed knife in his hand.

The entire incident occurred with extreme rapidity, occupying only a few seconds. ~~Gilli~~ Gilligan having more distance to cover, must have been moving approximately three times as fast as Powell. Although it is suggested that Gilligan stopped before he fired, this is inherently improbable and contradicted by witnesses. The fair conclusion is that Gilligan and Powell were moving towards each other, Gilligan moving faster.

Some witnesses claim Powell's hands were at shoulder height, some that they were down when he was shot. The former testimony is probably correct in view of the path of the bullet. ~~[illegible]~~ The fair conclusion, then, is that Powell's hands were at about shoulder height when he was shot.

This tends to confirm that he either had no knife in his hand, ~~threw~~ threw the knife away to the gutter where it was found later, or was gesturing ~~that the~~ surrender. All of these alternatives are supported by witnesses. No witness saw an attack, and the position of the hands will not support the hypothesis that there was an attack.

Powell ~~did~~ had never seen Gilligan. Consequently there was no motive for an attack.

Gilligan shot from the hip as he came. It is suggested that the bullet found in the doorframe was a warning shot. If so, it was fired waist-high directly across the path of the boy. It passed through a pane of glass in the closed front half door and buried itself only to a depth of three-fourths of an inch. It could well have passed through the boy, although the police ballistic expert does not think so.

The official version is that the second ~~B~~ bullet struck Powell's arm, then entered his chest. But Powell continued to attack. Therefore, in self defense, Gilligan shot again.

This story is contradicted by the witnesses and objective considerations. First, it assumes Gilligan to have halted, which he probably did not. Second, Gilligan used a .38 calibre revolver, a weapon with great stopping power. At close range, and the two cannot have been more than five feet apart, the shock of impact ~~would have been~~ was tremendous. The impact ~~would~~ exceeded a blow from a sledgehammer.

It is ~~the~~ objectively unbelievable that a ~~man~~ 122 pound boy, struck in the ~~arm~~ ~~and~~ forearm and chest by a .38 ~~cal~~ calibre bullet could continue an attack.

The witnesses confirm this ~~concl~~ conclusion. They uniformly say that the first bullet caused Jimmy to fall against a low railing and then further forward. The second bullet, they say, struck him either as he was falling or after he had fallen.

The objective evidence suggests that the second bullet entered the abdomen and exited the back, ~~leading~~ from which it is concluded that the shot was fired as the boy was falling. Exit and entry wounds are sometimes confused, however. Some witnesses, seeing Gilligan stand over the fallen boy, gun pointing, may have thought he shot then.

Gilligan then turned the boy over with his ~~foo~~ foot. Several people were within a few feet throughout the incident, but Cliff ran across the street to reach

Powell first. Cliff saw that Jimmy was ~~a~~ alive, tried to talk to him. But Jimmy could say nothing. Cliff turned to Gilligan, asked him to get an ambulance. Gilligan then pulled out his badge. Said, "I'm a cop, he's my prisoner, you get the ambulance". That Gilligan first showed a badge after the shooting is confirmed by a number of witnesses.

As Gilligan stood by the dying boy, more and more students came over, a hysterical mood growing.

It is now necessary to return to the moments before the shooting. The whole incident occurred so rapidly that exact recollection ~~count~~ by witnesses cannot be expected. To understand the event it must be tested against various hypotheses.

~~Since the for~~ What would have happened if Gilligan had not appeared? Probably nothing. Jimmy was leaving 215 when he was shot. He was acting alone, whatever he had in mind. Unable to enter the building, he can be assumed to have intended to go back across the street. ~~The~~ Gilligan's interference, therefore, was the causative fact of ~~of~~ Jimmy's death.

What, then, induced Gilligan to interfere? There is no evidence available to CORE which is decisive. ~~On the~~ Probably Gilligan ~~saw~~ saw ~~a~~ Powell go to 215. If he heard him say anything on the way, no one else did.

~~What induced~~ Why did Gilligan have his gun levelled? Gilligan may have had a reason not apparent from the known facts. Gilligan's background and New York police practice suggest that Gilligan would have appreciated no reason *not* to draw his gun.

Why did Gilligan shoot? It is not certain that Powell was even aware of Gilligan. The whole ~~&~~ incident was so rapid that Gilligan may have seen as an attack what was nothing at all, may have shot in reflex, in error.

Why did Gilligan shoot ~~to~~ more than once? Because he had taken a position, a sequence of action had commenced. It is doubtful that, having begun, Gilligan had time to reflect. His training offered no alternative.

~~Did~~ What was the effect of Powell's race? ~~Had~~ [illegible] Had the same incident occurred across the street from P.S. 6, Powell would not have been shot. This conclusion rests on the strange features of the whole case, on the difference between police practice ~~a~~ affecting whites and non-whites, above all on the willingness of New York police to use deadly force against negroes.

The inescapable conclusion is that Gilligan, ~~sh~~ knowingly shot a small boy in a hasty, probably unnecessary action. Gilligan's record of disarming adult criminals makes the present case incomprehensible except in terms of police department laissez-faire.

The law regarding use of force by policemen gives them great discretion. They use, indeed abuse, it. If a policeman acts to prevent a crime, he may use force. If a policeman believes a felony to have been committed, he may use force to prevent escape. In self-defense a policeman may also use force. The force is to be "reasonable". But deadly force may be used. The degree of force legally permissible is ~~most~~ obscene.

In this case, no crime was in fact being committed; but Gilligan may have thought the contrary. If he saw Powell try to enter 215, he might have been concerned. Of course, as a visitor to the building, he knew the inner door was locked. Yet Gilligan could not have been acting to prevent a crime, since Powell was leaving 215 when shot. The claim of self-defense does not lie if Gilligan was running at the boy with drawn gun. More, to fire at least ~~the~~ two bullets into the boy transcends defense.

The conclusions of one person on such questions are not, however, the necessary conclusions of another. If the facts were ~~one believes~~ that Powell had an open knife in hand; that Gilligan had grounds, as an officer, to interfere; that Gilligan had stopped; that Gilligan audibly identified himself as a policeman and wore his badge; that Powell then attacked Gilligan, then under present law Gilligan had a right to use ~~avail~~ force available to him. Powell's assumed knife was a deadly weapon. Thus a deadly weapon could legally be used in response.

This state of the law is obviously unsatisfactory. Policemen should not shoot boys half their size. Policemen should be trained to disarm. Policemen should be trained to use ~~gun~~ force only when absolutely necessary and then to use the least possible force.

Here Gilligan's readiness to shoot, directly related to laws which ~~permit~~ sanction such action, led to an unnecessary death. Had Gilligan not drawn his gun, had he sought simply to stop the boy, ~~a~~ the probability is that no violence at all would have occurred. Had this entailed some risk to Gilligan, so be it. The police exist to protect citizens, not shoot them. ~~M~~ No ~~syp~~ sympathy can be extended to a two hundred pound adult, trained to force, who kills a small boy to avoid some personal risk. The point is that it did not matter to Gilligan if he shot or not; ~~Where~~ ~~Police~~ ~~in other cop~~ and until Police are taught not to shoot, New Yorkers will continue to be needlessly injured and killed for the alleged end of law and order.

A minor, indeed comic, street incident results in death. The occurrence is not unusual. Before and ~~$~~ since the Gilligan case there have been others. The odds on every street day favor that a new incident will ~~as~~ take place and that it will involve a negro victim. The constitutional rights which surround a defendant mean little to the dead and maimed.

MSS SEDFRE
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Gilligan, Thomas R. US Farmer, James; C.O.R.E.; eT al.
Witness interviews

Box 37
Folder 6

State Historical Society of Wisconsin

Please Retain Original Order

July 16, 1964

WITNESSES:

| | | | |
|---|---|---|---|
| Rosalie Johnson | 15, | 620 E., 137 St.,(3-A) | ME5-1612 |
| Shirley Pledger | 15, | 640 E., 137 St.,(2-B) | CY2-4296 |
| Roger Williams | 14, | 164 St. Ann's Ave. Bx.(2-E) | |
| ✓Felix Short | 14, | 140 W., 142 St., (#22) | WA6-2487 |
| Carl Dudley | 14, | 1766 Bergen St.,Bklyn,(Private House) | |
| Roger Lynch | 14, | 164 St. Ann's Ave. Bx. | |
| Leon Alston | 14, | 1686 Randall Ave., Bx. (6-D) | |
| Clifton Harris | 14,15, | 1680 Randall Ave. Bx. (2-A) | |
| Edward Sampson | 14, | 1686 Randall Ave. Bx. (3-D) | |
| Alfreda Boykine | 15, | 14 W., 112 St. | AT9-7228 |
| Linda Turner | | 60 W., 128 St. | TE1-8797 |
| Katherine Adams | | 41, 117 St. | EN9-0829 |

James Powell 1686 Randall Ave., Bx.
Mrs. Marsh (Powell's aunt) - 325 E., 106 St. (4-A) - LE4-4823

Revd. Terrell - Union Baptist Church (Private) AU1-0854
(Church) AU1-1139
(Home) 914-MO7-1138 (Mt.Vernon )

Q: What is your name?
A: SHIRLEY ROBINSON.

Q: Where do you live?
A: 360 Beekman Avenue, Bronx, N.Y. Telephone MU 5-9141

Q: This is July 22nd and we are here in my office. Now, present are also Jim Finney and Robert Hoguet. Shirley, would you tell us what you saw last week please on the 16th?
A: From the beginning?

Q: Yes. Would you start by telling us when you arrived near the school.
A: I arrived near the school a couple of minutes after 9, because I was late for my first period class.

Q: What was your first period class?
A: Pre-Algebra.

Q: You arrived a few minutes after 9. Would you tell us what you did?
A: Powell and two other friends of his were on the stoop. So I stopped to talk to them and then I left them on the stoop and I came across

Q: Could you tellus which stoop that was?
A: It was across the street whichw as a little ways down the block from the school.

Q: Was that the stoop where hew as shot, or some other stoop?
A: Some other stoop.

Q: Can you tell me where that was? On the same side as the school?
A: Yes, on the stoop of some building the same side as the school.

Q: Nearer 3rd Avenue from the school or near 2nd Ave.?
A: Near 3rd.

Q: Between the school and 3rd Ave.
A: Yes.

Q: Do you know who was with him?
A: Shannon and Eddie?

Q: Who is Shannon?
A: He is a friend of his.

Q: Do you know his last name?
A: No.

Q: Eddie would be Eddie Sampson?
A: I don't know his last name.

Q: Go ahead.
A: Then I crossed the street because I had some friends across the street, to talk to them. Then we went to the store around the corner on 3rd Avenue and when we came back there were some boys sitting on the stoop.

Q: Which store around the corner on 3rd Avenue w asit?
A: It was something like a grocery store.

Q: Why did you go there?
A: I'm not sure but I think the store across the street was closed or something, so they went around the corner.

Q: Did you go around the corner?
A: Yes.

Q: What did you go around the corner for?
A: A package of

Q: Let me ask you one thing,Shirley. Did the kids swipe anything in the store?
A: Not when I was there.

Q: You are sure of that. I just want to know the truth. It is not going to hurt you to tell the truth. Somebody said the kids swiped some stuff in there and I just want to know if that is what happened.
A: Not at the time I was there. But I have seen people come in the store and come out with things.

Q: That they did not pay for? But not on that occasion?
A: Not on that occasion.

Q: All right.
A: Thenwe came back around the corner and we was on the same side that Powell got shot on. We were standing, you know, I put my books on the car and I was standing up. This boy he was standing with one foot on the curb and this man he had a hose . First he was spryaing it in the trees.

Q: Shirley, just a second. Could you tell me about that particular boy?
A: I never saw him before.

Q: Does he go to that school?
A: I think he did. Mostly everybody that was out there during that time went to that school.

Q: The thing is I have talked to quite a number of people who go to that school and none of them seems to know this boy. Is there some feeling of protecting him or hiding him or something?
A: No.

Q: You never saw him before?
A: That was the first time I ever saw him.

Q: It would really be very important for us to talk to this boy.
A: Well you know I read in the papers where they said that the boy that first got angry and threw the garbage can they say that he was the one that gave Jimmy the knife.

Q: I don't much care what the papers say because well, the papers have been saying all kinds of things and some of them are accurate and some of them are not; and I am only concerned with what you know yourself. I have talked to a couple of Jimmy's friends and he wasn't one of them as far as I could tell. If you saw him again would you recognize him?
A: I don't know. I'm not sure if I would know him again. I may know him again if I saw him again.

Q: You did know most of Jimmy's friends; you know Cliff Harris, well you know him by sight I suppose?
A: Yes.

Q: I mean these are all kids that have been around there before?
A: Yes.

Q: You saw this boy on the curb, you said?
A: Yes, he had one foot on the curb and so the man was spraying up there in the trees and I'm not sure but when he was spraying up there in the trees, I think some water hit him, so then he started spraying down on the ground.

Q: Did this boy say anything?
A: Not until the water hit him.

Q: What did he say then?
A: He told him to watch out with the water.

Q: What did the man say then who was doing the spraying?
A: He didn't say anything then. So the boy stepped up on the curb and then the water kept, you know, he wouldn't move the hose he just kept spraying. Then the boy he was getting ready to come towards him but then he didn't have anything in his hand. And the man kept wetting him up so he said he was going to wash all the black off of him. Then he came back, he got a garbage can top from not too far away from where he was standing. So he picked up the garbage can top and he threw it at him. The man ducked and didn't get hit. Then he picked up another one and he threw it at him and then there was no garbage can top there and he went down the street

Q: Towards 2d Ave?
A: Towards Third. The TV shop was right there and the garbage cans I think they were right in front of the TV shop. I don't think there was any tops on the garbage cans so he must have got the bottle out of the garbage can. He took the bottle and he threw it at him. He was still getting wet up. Some other boy, I don't know how, he got into it but he got wet up too and so then they kept throwing glass so I got out of the way.

Q: Where did you go?
A: I was standing in the street.

Q: You were standing in the street, nearer to the side of the street where the TV shop is or nearer to the school?
A: I was standing nearer to the school. You know, I was in the street. So then that's when Powell came across the street and so he was standing up there and he got wet too. Then I don't know what happend but the man ran in the building.

Q: Which building did he run into?
A: The building that Powell got shot at.

Q: What happened to the hose that he was using?
A: I don't know what happened to the hose.

Q: You didn't see anybody come and get the hose?
A: No, I didn't notice.

Q: Before he ran into the building did he yell anything more at the kids? Did the kids yell anything more at him?
A: They were throwinggarbage and stuff.

Q: Were they yelling?
A: I don't remember, I don't think so.

Q: Were they just silently throwing garbage?
A: No they weren't. I don't know what they were saying, I can't remember.

Q: I am not asking what they were saying, but just were they saying something, shouting or yelling?
A: I don't know.

Q: Try to think back, was it noisy or was it quiet?
A: It was noisy.

Q: Sure it was noisy. All right, so the man ran into the building and then what happened?
A: Powell ran in the building too.

Q: Now, let me get this very clear because it is quite important. He ran after him?
A: No, not exactly. He wasn't right after him.

Q: Let me get this clear. The man ran into the building. Now, was he in the building before Powell started after him?
A: Yes.

Q: Is that right?
A: When he went into the building Powellwas going up but he wasn't directly after him.

Q: He wasn't really behind him?
A: No.

Q: Then what happened? You say Powell went into the building. Where were you standing at that point?
A: I was still standing in thestreet.

Q: You were still standing in the street, sort of opposite. Powell ran into the building, he went to that door there, there was another door behind it, you didn't actually see him go into the building. You saw him go past the first door, is that right?
A: You know, the one door to the side was open.

Q: There are two doors up there and one of them was open and he went in there? How long was he in there?
A: He wasn't in there very long. Just a couple of seconds.

Q: Just a couple of seconds. Sort of as if he had gotten in, found a locked door inside and then came right out again?
A: I'm not sure but I don't remember. He went in and he came back out but I wasn't looking at him.

Q: Of course. Where were you looking?
A: I wasn't paying much attention at first.

Q: What were you paying attention to? Were you with some other people?
A: No, I was standing by myself.

Q: He ran in there and he came right out again. Then what happened?
A: Then when he was coming out, the man with the gun he came out of the TV store and when he came out he just shot him.

Q: When did you first notice the man with the gun?
A: When he was coming out the door.

Q: You saw him coming out of the TV store?
A: Yes and he had the gun in his hand.

Q: Did you yell anything, did you say anything?
A: I was too shocked to say anything. I was just standing there.

Q: Then he ran right up to Powell?
A: Yes.

Q: Tell me something, where was he when he fired the first shot?
A: He was not exactly on the stoop, when he fired the first shot. I don't remember but he wasn't on the stoop.

Q: When you say not exactly on the stoop, would you say he had one foot on the bottom of the stoop?
A: Yes.

Q: Then he had one foot on the bottom of the stoop and one foot on the side walk?
A: Yes.

Q: Or did he have both feet on the sidewalk?
A: He did not have both feet on the sidewalk.

Q? You're sure?
A: Yes.

Q: How far apart were the man and Powell, would you say, when he fired that shot?
A: From about where I am to about where you are.

Q: Well, we're sitting about 3 feet apart, maybe 4 feet. Now did you see him strike at the boy in any way?
A: No.

Q: Which hand did he have his gun in?
A: Well when he came out the gun was, I could see it, I think it was in his right hand.

Q: You could see the gun when he came out of the store?
A: Yes, because after he shot him he was standing back on the stoop.

Q: You mean he had the gun in his hand when he came out of the store?
A: When I saw him the gun was out.

Q: Did he say anything:? Did you hear him say anything?
A: I didn't hear him say anything.

Q: Did he say something like Hey You?
A: No. I don't remember him saying anything.

Q: Did you hear anybody else yell anything?
A: Cookie

Q: Cookie is Rosalie Johnson
A: Cookie she went over there to tell him to look out.

Q: Why did she tell him to look out?
A: Because I think she saw the man with the gun and so she told him to look out. While she was saying it he was getting shot.

Q: When did she run across the street?
A: No, she didn't run across the street because I overheard her saying to someone, you know, theman had wet her on the legs so she said she was going back over there and the girl said "Where did you get wet" and she Said "On My legs." So that's when she started back across the street.

Q: Did you hear her say why she was going back over there?
A: She was probably back over there to throw garbage.

Q: She was pretty mad?
A: No, she wasn't made but she

Q: All in the spirit of good fun?
A: Yes.

Q: She was standing there and she saw the gun and you heard her yell "Look out" or something like that?
A: Yes.

Q: When he fired the first shot, what happened to Powell?
A: He kind of leaped up and fell over the rail.

Q: Fell over the railing?
A: Yes.

Q: How did he fall? Forward?
A: He was like this, he fell over the railing and fell over.

Q: You are indicating forward. How did he land,with his head toward the curb or toward the porch?
A: I don't know where his head was.

Q: Think back a little bit. You saw him fall. When he was shot, he was facing towards the street, is that right?
A: His head was facing towards 3rd Ave. this way.

Q: In other words, he was looking in the direction of the man who was coming toward him?
A: I don't think he saw the man.

Q: You don't think he saw him?
A: No.

Q: What you are saying is that he was looking toward the TV shop, looking toward 3rd Ave., before he was shot.
A: Before he was shot, no, I don't mean that. You know, when I saw him laying on the ground his head was towards 3rd Ave.

Q: I see, he was lying sort of diagonally on the sidewalk. When you say that you don't think he ever saw the man who shot him, I don't understand. How was he facing when he was shot? Where was he looking when he was shot?
A: I don't know where he was looking. I just saw him coming walking.

He didn't come to the stair, when he came to the first stair he was shot.

Q: Let me get this a little clearer. We have Powell over here. Which way is he pointing as he comes down the steps? Across the street? As he came down the steps, was he looking across the street?
A: I don't know where he was looking.

Q: The man who shot him came from his right side, isn't that right?
A: Yes.

Q: Yes, from the TV shop. When you say you don't think that Powell saw the man who shot him, ---
A: You know, he might have seen him but he didn't know who he was. He didn't recognize him.

Q: You are saying that the man came at him sort of from the side. You say he didn't give a warning?
A: No.

Q: Didn't he say anything?
A: No. When he shot him I thought that somebody told him what happened and he just shot the first person he saw. I didn't know why he shot him, he didn't say anything.

Q: You were in a position to see whether Powell had anything in his hands. Where were Powell's hands when he was shot?
A: When he came out I guess they were at his side. Because I didn't see anything in his hands.

Q: Are you sure? You say you guess they were at his side. I mean, were they up, down?
A: They were down.

Q: You didn't see anything in his hands?
A: No.

Q: You're sure of that.
A: I'm sure of that.

Q: How long have you known the Powell boy?
A: I met himlast Monday.

Q: What is the date of last Monday? Was it the Monday before he got shot?
A: Yes, it was the same week.

Q: You didn't meet him until the week in which he was shot?
A: Yes.

Q: You never met him before.
A: I'd seen him around ~~that~~ but that was the first time he ever said anything to me.

Q: You had seen him around in school?
A: Yes, I saw himin the auditorium and I saw him one day in the candy store and I saw him in the halls.

Q: You didn't go to the same school in the wintertime?
A: No.

Q: What kind of a boy was he?
A: From what I could see he liked to joke around, laugh and talk.

Q: Was he a tough kid?
A: No, I wouldn't say that, I didn't think so.

Q: Did you ever see him carry a knife?
A: No, I never saw him with a knife.

Q: Well he did own a knife.
A: I wouldn't know. I never saw.

Q: Did you ever see him get in a fight?
A: I saw him playing around with this boy one time, I don't know who it was. Sort of playing around, you know, just slaps.

Q: I don't see what you mean. Do you mean sort of like fighting in fun or were they fighting?
A: They were fighting in fun.

Q: I'm talking about actual fighting. Did you ever see him actually fighting anybody?
A: No.

Q:: Did you know what his reputation was around school?
A: No, but I never heard anybody say anything bad about him.

Q: Did you ever hear anybody say anything good about him?
A: No.

Q: You just didn't hear anybody talk about him particularly.
A: No.

Q: Did you have friends in common, you know, people you were friends with who were also his friends?
A: Yes.

Q: Who, for example?
A: You know, Carol and Ray and Mary and Lillian, Cookie, Patricia.

Q: Can you give me their last names, do you think?
A: Well it was Carol White, Lillian Brown, Rosalie Johnson, May Edwards, Mary Niles, Patricia Niles.

Q: Are they sisters?
A: Yes.

Q: Which of these girls would you say were the friendliest with Powell?
A: Well, I wouldn't know because sometimes I seen him talking to Carol

Q: Was Cookie pretty friendly with him?
A: In a way, yes, she was just like me, she laughed and talked with him, that's all.

Q: I hope you understand that there is nothing wrong, boys and girls do go out together sometimes. I am just trying to find out who his friends were, you know.
A: I met him before she did.

Q: I see. If I were to ask what happened there, what went wrong, why did this happen?
A: I really don't know. The man probably didn't want us over on that side of the street.

Q: Had he said that to you before?
A: That's the impression we got.

Q: How did you get that impression?
A: Well, he just kept spraying, you know, he wet me too.

Q: Did this ever happen before over there?
A: No.

Q: Had there been any sort of trouble over there in that neighborhood?
A: Not that I know of.

Q: Had Powell been involved in any trouble before over there?
A: I don't think so.

Q: You didn't hear anybody say anything to the guy that shot him?
A: KO and some other boys there, they were coming towards him and so he told them to stay there.

Q: That was after he shot him?
A: Yes, that's when he pinned his badge on him.

Q: Where did he take his badge from?
A: I don't know, I just saw his hand and he just put the badge on.

Q: He pinned his badge on after he saw the boy?
A: Yes.

Q: Weren't there some other people hanging around there, some grownups?
A: There was one lady, she spoke to the reporter after I spoke to him. I don't know where she was at, she said she saw it but I seen her around before because she brings her daughter to the school and takes her back home.

Q: She brings her daughter to school and takes her home?
A: Yes.

Q: Did you see any man hanging around there?
A: I don't remember if there was one or two. I know there was one but I don't know if there was any more.

Q: Was he outside when this happened?
A: I know he was outside when they was spraying us with water but I don't know where he was afterwards.

Q: You don't remember afterwards? Did you see anything like a telephone repair man around there?
A: No.

Q: A man carrying a tool kit or anything like that?
A: No.

Q: Your Name is?
A: ANTHONY ROMANO

Q: Your Address:
A: 2086 Second Ave.

Q: About what time did you first notice anything?
A: I think it was about a little before 9:30, when two girls were fighting.

Q: Where were they fighting?
A: Right across the street. By the building a little further down.

Q: The superintendent's building?
A: Yes, a little further down.

Q: In other words, the super's building, then another apartment house and then the store, right?
A: Where the TV thing is.

Q: Oh, they were fighting in front of the TV store, and you were doing what?
A: I was watching from the window.

Q: What floor were you on?
A: Third floor, in English class.

Q: What was going on?
A: I don't know, they were just fighting.

Q: They were fighting in front of the store, and then what happened?
A: Then they went over towards the street and knocked down some garbage cans and Felix broke up the fight.

Q: Who is Felix?
A: The boy in the next room, your next room.
Q: What happened?
A: So they broke it up, they was laughing and everything, then all of a sudden the man came out and I didn't hear this part.

Q: What man?
A: The super of the building, he said "I'm going to wash you dirty niggers clean", you know.

Q: This was how many buildings away from the store?
A: Right next door, the building that joins it. The boys started screaming at him and threw a garbage can top at him.

Q: Did he hose them down?
A: Yes, he wet one of the boys.

Q: Before the guy threw the garbage?
A: Yes.

Q: So he came out and he was trying to get them off the stoop
A: Yes

Q: They were on the stoop and he came out, of a side entrance or something?
A: No, he came out the front entrance because this happened before, you know, sitting on the stoop. Anyway they threw a garbage can top at him.

Q: Who is they?
A: The fellows that he wet.

Q: Did you see which kid it was?
A: No, I didn't see that. Anyway, the man ran into the house.

Q: The super?
A: Yes, the kid ran behind him and he had a knife in his hand.

Q: What kid?
A: The kid that got shot.

Q: Was he the kid that threw the can?
A: No.

Q? One of the kids threw the can top at the super and the super went into his place. and Then what happened?
A: The kid went behind him.

Q: Which kid, Powell?
A: Yes, Powell went behind him to the door.

Q: To what door?
A: The inside door.

Q: Inside the super's building?
A: He went into the building right to the door before you go in.

Q: Were there steps up to the building?
A: Yes, but he hadn't got through that door yet. He went to that door.

Q: From the street, how did he get into the house?
A: You know, there is the regular door that you first come to.

Q: In other words, there are no steps up to it?
A: No, yes, there is a stoop there.

Q: Just one step?
A: No, three steps, I think. So then he went into the building and there is another door before you go inside the building. So he went into the door and he came back out with the knife.

Q: What was he doing with this knife?
A: I think he was opening and closing it or something and then he got rid of it.

Q: When he went into the building itself did he have the knife open?
A: I'm not sure, I think he did.

Q: You saw the knife?
A: Yes, I saw the knife. He had an object in his hand which was the knife, and then he came out and then he got rid of the knife and showed this cop his hands.

Q: Now, when he came out of the building, was he walking, was he backing out of the building?
A: No, he was coming straight down.

Q: He came straight down from the building and what was he doing with the knife at that time?
A: H e was opening and closing it, then he closed it up and got rid of it.

Q: Why? On the way down the steps?
A: Yes.

Q: Was he still on the steps?
A: Yes, he was still on the steps and he got rid of it.

Q: Why did he get rid of it?
A: He saw the man coming with the gun.

Q: Where was this man with the gun coming from?
A: He was in between two parked cars, you know, on the side of the building, coming on the sidewalk.

Q: The side that is near the TV shop?
A: No, the opposite side, that is the way I saw it. He came from that side and then he walked up the

Q: He was walking across the street though?
A: No, I seen him across the street, I saw him in the street.

Q: When was the first time you saw this cop, this guy with the gun?
A: It was when he walked from the shop.

Q: Where was he the first moment you saw him?
A: He was just about in front of the building, and then he shot

Q: In front of the building that Powell was coming out of?
A: Yes.

Q: You said he was between two parked cars, in the street?
A: Oh, yes, he came from between two parked cars, like.

Q: So he was in the street, the cop was in the street?
A: Right on the curb. You know, where~~e~~ the parked cars were, right on the curb. And then he came towards Powell and Powell, you know, he waved his hand in a gesture saying No, you know. So it seemed like he put out his hand to grab Powell and he shot Powell and Powell went down and he shot him two more times and then he came

Q: Wait a minute. So this cop was underneath Powell, Powell was still coming down the steps?
A: No, Powell was down the steps already.

Q: Powell was down the steps and he approached him on the sidewalk. How far away? About as far as you from me?
A: Yes.

Q: Say about 4 feet.
A: Yes, just like that and he went to grab for him and he shot him and just when Powell went down he shot him twice more.

Q: He shot him the first time and what happened?
A: Powell went straight down.

Q: But he fell towards the cop?
A: No, he went straight down. He went on his knee and then we went down slowly.

Q: Which way did he start facing?
A: He was facing, see the crowd gathered then, he turned around like this and his back, then the cop's back was turned

Q: Who turned who around?
A: The cop turned around like this and then his back was facing the hallway.

Q: The stoop?
A: No, the hallway to the building.

Q: The cop had his back towards you when he shot him the first time?
A: No, he was standing sideways. I told you, he came from the side.

Q: I see.
A: Then he shot and then his back was facing the hallway and he shot Powell two more times. ~~His bac~~

Q: His back was facing the hallway?
A: The policeman's.

Q: Right good. Powell had already fallen?
A: Yes and he shot Powell two more times, stood over him with his gun and he did something with his gun in his pocket. I think he was taking bullets out, you know, to say he fired a warning shot. Then he put his gun in his pocket and then he put his badge on his shirt and said, "I'm a detective."

Q: How do you know he said that?
A: You could hear it.

Q: You could hear it all the way across the street?
A: You could hear it very vaguely and you could see him mouthing it, you know.

Q: You actually heard the cop specifically say it?
A: No but I could figure it, I didn't exactly hear it, it was very vague, that is the way I caught it.

Q: Did you hear the cop say anything to Powell?
A: No, he didn't say nothing to Powell.

Q: He never said anything to Powell?
A: No, just walked up on him and shot him.

Q: Powell never did anything?
A: No, he didn't do anything.

Q: Is it possible that when Powell went like this, did he try to put his hands up to fight the cop?
A: No, he didn't, he had his hands open.

Q: Was he menacing at all?
A: No.

Q: He had his hands open, his palms facing the cop?
A: Yes.

Q; Let's get this down on a piece of paper. This is 76th Street and 2nd Ave. is here and there is 3rd Ave.
A: No, 2nd Ave. is there and 3rd Ave. would be over here.

Q: Here's the building and here's the TV shop and right next door to the building that is the house he came into and then he came out of. Let us say this is the sidewalk.
A: When I saw the cop, the cop was right about here. He was facing sideways.

Q: Oh, so the cop~~s~~ was over here then. The school is where?
A: Over here.

Q: So the other building next door had nothing to do with it?
A: Nothing to do with it.

Q: The cop came across the sidewalk?
A: He came from the sidewalk, came down and he shot Powell. That is how I saw it, he was facing this way.

Q: Is it possible that the cop had come out of this building?
A: That is what I think, but I didn't see him come out of the building, I saw him over there and when he shot Powell, he was standing on the steps. That's when he shot him and that's when Powell was on the ground.

Q: He was standing on the steps?
A: Yes.

Q: It was after the first shot that he turned around on the sidewalk? Let's get a clear picture of this. Where was the policeman when he actually shot?
A: He was like

Q: Let's do that again--when he fired the first shot, as far as you saw, where was he in relation to the stoop?
A: He shot and turned his back to the stoop.

Q: The policeman?
A: Yes.

Q: Where was Powell in relation to the stoop, was he on the stoop?
A: Powellwas down on the ground after he shot him.

Q: Now, before the first shot where was Powell?
A: Powellwas coming down the stairs?

Q: Powell was coming down the stairs and he had his hands up?
A: Yes, he did like this.

Q: You saw the palms of his hands?
A: Yes, he was saying a gesture No, you know.

Q: You saw the palms of his hands, you are sure of that?
A: Yes.

Q: You saw the palms as Powell was coming down the stoop?
A: He was on the side of the stoop.

Q: On the side of the stoop?
A: Yes.

Q: At that point you say he grabbed for him?
A: Yes.

Q: He reached his hand out? How far apart were they at that point? Like we are now?
A: Just like that.

Q: The policeman was moving towards the boy you say?
A: Yes.

Q: And reaching for him, but had not yet actually touched him?
A: Yes.

Q: And we are standing about 4 ft. apart. Is that about right?
A: Yes.

Q: As he was doing this he fired the first shot?
A: Yes he shot him.

Q: When the boy fell how did he fall?
A: He fell on his back, I mean he fell on his stomach because he went down like this.

Q: In other words, he crumpled from the knees; the motion you just made was he crumpled from the knees in a forward partly sideways position. Is that right?
A: He went like this, he hit the ground.

Q: He crumpled from his knees and went down in a forward and partly forward, partly on his side, that is how he landed?
A: No, that's how he went down but he landed on his stomach.

Q: And now the policeman then fired two more shots. Had the boy hit the ground when he fired the second shot or was he still falling when he fired the second shot?
A: I think he was still falling and then I heard the last shot and he was down, he was on the ground.

Q: In other words, the second shot was fired as he was falling, you think?
A: I say he was laying

Q: Was Powell finishing his fall or was he already down?
A: He was finishing his fall.

Q: And the third shot you are sure he fired the third shot as he was lying on his stomach?
A: Yes and then he walked over to the kid and kicked him.

Q: Kicked him? Where did he kick him?
A: I think he kicked him in the side.

Q: In the side?
A: It was the side of the auto because he had his arms like this.

Q: He fell with his arms across his chest?
A: Then he did like this and his arms went out and his legs went up in the air while he was laying down and then he just fell back down to the ground.

Q: Thank you very much. We want to talk to as many people who might have seen this as possible. Do you know any of the names?
A: I saw them and a lot of people were looking.

Q. What is your full name?

A. Felix Short.

Q. How do you spell that?

A. S-H-O-R-T.

Q. Where do you live?

A. 140 West 142nd Street.

Q. What's your telephone number?

A. WA 6-2487.

Q. You just said something about the Assistant District Attorney telling you that if you wanted to change your story, you should call him?

A. Yes.

Q. Was he trying to get you to change your story?

A. Yeah. Once in a while he try to make you get confused, you know.

Q. Was that, maybe, just cross-examination? He was just trying to be sure that your recollection was correct?

A. Yeah, I guess so.

Q. Was he unfair? Or was he nasty to you?

A. No.

Q. Did anybody threaten you?

A. No.

Q. He just said, though, that if you decided to change your story -- was that what he said?

A. He kept on saying he think I got a couple of lies in there someplace.

Q. He suggested you were lying?

A. Yeah.

Q. I see. Well, we don't like that. Okay, I'll leave you two gentlemen. [Schiffer speaking here.]

Q. All right, now, regarding the questioning by the police, do you recall who questioned you?

A. Naw, I don't know none of these guys' names.

Q. Where did they questioned you?

A. One time they questioned me in this office.

Q. Where was this?

A. As you come up the stairs, you turn--

Q. Come up the stairs to what? To what building? What was it?

A. It was in the police station.

Q. Which police station? Which precinct?

A. 19th.

Q. 19th Precinct?

A. Yeah. They take you in there first; then they start asking you what happen. Then after that they take you into this other office, and you sit there for about two hours waiting. Then this other policeman--

Q. They left you waiting for two hours before they questioned you?

A. Yeah. Over again. And then after that you have to sit down and wait all that time. After that they'll take you and ask you to write your confession out on paper, and then you have to sign it.

Q. Confession? You mean statement?

A. Yeah, my statement. And then after that they took me in this other room. And I had to sit down there until about 8:30.

Q. When did they first take you in there?

A. Which room?

Q. Well, what time did you first get into the police station?

A. About 12:30.

Q. Did you come voluntarily?

A. Yes.

Q. How did you get there? How did you get into the police station?

Ax Why did you go?

A. They took me in the police car.

Q. From where?

A. From Third Avenue and 76th Street.

Q. How did they get you in? Did they tell you, or order you to come? Did they ask you to come?

A. They asked me to.

Q. They asked you if you wantdd to come?

A. Yes.

Q. Did it seem like if you didn't want to come, they wouldn't have made you come.

A. No. I mean, you know, if you don't want to come, I guess they say all right, then you have to.

Q. So, they took you down at about 12:30?

A. Yes.

Q. And they questioned you?

A. Yes.

Q. They took you right in, and how long did they question you first?

A. First time they questioned me about, let's say about a half hour.

Q. Who questioned you, do you know?

A. No. I don't know none of these policemen.

Q. Was he a policeman, or a lieutenant?

A. Detective. He was a detective. Then this other detective took me in this other room and wrote out my statement.

Q. Well you said they had you waiting for--

A. They had me waiting for quite a long time before--

Q. Beofre they took you in to take your statement?

A. Yeah. And then after that, after ~~you~~ he wrote out ~~your~~ the statement, it was about 2:00. And then he had me waiting in this other room from 2:00 until about 6:00 or [something to seven?].

Q. They just asked you to wait?

A. Yeah. 'Cause I suppose to see the Assistant District Attorney.

Q. Did they give you anything to eat there?

A. Yeah. They gave me their sandwiches.

Q. How did they treat you?

A. They treat me all right.

Q. Good. And then the Assistant District Attorney came in?

A. No, I had to go upstairs and see him. Oh, before that, they took me in this other room where there was only one detective in there. And he questioned me.

Q. This was after 2:00.

A. Yes. And then after that I went back into this other room and had to wait until I seen the District Attorney.

Q. Okay, then, at 7:00 who questioned you?

A. At about 7:00, I was still sitting in the room. And that's when they took me over to this other room and gave me a sandwich and a soda. And then I had to come back and wait.

Q. And then who questioned you?

A. The Assistant District Attorney at about 8:00, something after 8:00.

Q. I see. What was his name?

A. Hannigan.

Q. Hannigan?

A. Yeah.

Q. And how long did this questioning last?

A. Questioning last about ~~x2~~ twenty minutes.

Q. And then?

A. After I told him one time, then he had this other man with this little machine take down what I said. Then he tried, you know, just a little bit once in a while to confuse you.

Q. It seemed like he was just trying to make sure of your story though?
A. Yeah.
Q. Or was he trying to break ~~it~~ you down?

A. It seemed more like he was trying to break it down.

Q. Oh. Did he think you were lying? Was that what he asked?

A. He told me he think I'm lying someplace along the line.

Q. Where, specifically, did he think you were lying?

A. Well, about, uh, the policeman didn't say anything, and he told me that it was so unusual for a policeman don't anything, just shoot the boy.

Q. And then you left at what time?

A. I left, say, about a quarter to nine.

Q. Okay, now, regarding the actual incident: About what time did it happen?

A. It happened about, pretty close to, say, about something to ten. I'm not sure.

Q. A few minutes before ten?

A. Yeah.

Q. And where were you at this time?

A. I was standing across the street in front of this building -- I think it's 220, I'm not sure.

Q. Where is that in relationship to the school?

A. Right exactly in front of the main entrance, in front of the school.

Q. Oh, you were standing in front of the main entrance to the school?

A. No, I was standing in front of the 220.

Q. Well, where is that?

A. On the same side of the street as where the accident happened.

Q. You were right across the street from the school.

A. Yes.

Q. All right, now, what happened?

A. Well, I saw this superintendant, who was cleaning the streets with a water hose. From up there he went down into the cellar. And somebody came along and threw the water hose down into the cellar.

Q. Threw the what?

A. Water hose, into the cellar. So he come back with his clothes all wet.

Q. The janitor?

A. Yes. So he didn't say anything; not that I know of. Then he continued to clean the street.

Q. What happened to this kid who threw the hose down the stairs?

A. I don't know what he did. He ran off some place.

Q. Yeah.

A. So after that, he turned the water on some boys -- some, you know, large, big boys.

Q. Where were the boys?

A. They were standing on the side of-- right near the front of the TV repair shop.

Q. The boys were standing in front of the TV repair shop?

[Interruption]

Q. All right, now, you say the janitor came out the cellar all wet?

A. Yeah. So, after that he didn't say anything. Not that I know of. He continued cleaning the street. I was standing on the side, talking with some--

Q. What'd he have, the hose?

A. Yes, the water hose. Now then he turned it on some big boys.

Q. Where were they?

A. They were standing in front of the radio repair shop.

Q. Where is the radio repair shop?

A. Right next to 215.

Q. I see. Oh, 215?

A. Yes.

Q. You said you were standing in front of 220?

A. Yes. That's on the opposite side. S o, after that-- they didn't like it so, you know, they started throwing garbage can tops at him.

Q. How many did they throw?

A. About three.

Q. How many people were throwing theM?

A. Three, four.

Q. They threw garbage can tops at him? And what did he do?

A. After that he dunked a couple of them. Then this little boy was sitting on top of the garbage can. He didn't say anything at all. And he just turned the water all on his face and everything, on purpose. So he started crying. And then he picked up a bottle and threw it at him. And then everybody started throwing garbage can tops and bottles.

Q. This little kid threw a bottle?

A. Yeah.

Q. Did they start throwing more garbage can tops?

A. Yeah.

Q. About how many more did they throw?

A. Four, five.

Q. How many garbage cans are there?

A. Quite a few.

Q. This is in front of the radio-TV shop?

A. Yeah. So after that the superintendant ran into the building.

Q. What entrance?

A. 215.

Q. What entrance to 215? The main entrance?

A. Yes.

Q. Did he put off the hose?

A. No. Some other man went downstairs and started to cut it off.

Q. Where was this other man?

A. He lived in the building. I don't know what the number of the building is. It's two parts, you know, like you walk down a couple of steps, and then you turn--

Q. I see. Where did he come ~~front~~ from?

A. He come from right next door. You see, there's a radio repair store. He's on the other side of the radio repair store and this is 215. He lives on this side here. So after that, he was down there and he cut it off and came back up.

Q. He came back up, and where did he go?

A. And then he told us, why don't we just leave the guy alone. So nobody didn't say nothing.

Q. He was white?

A. Yes. So nobody didn't say anything. They just, you know, some of them walked off. Then said, "Here comes this cop." I don't know, I guess he was a cop.

Q. Where did he come from?

A. He look like he come out of 215. That's why I keep on saying he look like he come out of 215.

Q. This is after the superintendant had already gone into 215?

A. Yes. He comes out. And Powell was walking across the street from the side of the school to the side of 215.

Q. I see. Straight across the street?

A. Yes. But he had to turn a little bit to come near the front of the building. People said he ran into the hallway. I didn't see him run into the hallway, but I think he did.

Q. People said who ran into the hallway?

A. You know, a lot of people said that he ran into the hallway.

Q. Who's he? Powell?

A. Yes. And two other boys.

Q. Well, what did you see?

A. All I saw was when Powell came across the street.

Q. Did he come by himself?

A. Yes, he came by himself.

Q. Did he have anything in his hands?

A. Yeah. He had a beer can in his hand.

Q. He had a beer can?

A. Yes.

Q. Was it empty?

A. It was empty.

Q. Did he have a knife in his hand?

A. No. I didn't see no knife. And the policeman--

Q. What was he doing with a beer can?

A. I guess everybody else was throwing things, at the super, so I guess he was going to do the same thing.

Q. Did he throw anything, or was he just holding it?

A. He was just holding it. And this off-duty patrolman comes out of 215--

Q. While Powell was walking across the street?

A. Yes. And he shot him, first, once. Powell went down on the ground. And after that he shot two more times [...].

Q. Now wait a minute. Powell started walking across the street?

A. Yes. From the side of the school.

Q. That's right. To the side of the school it's almost straight across the street.

A. Yes. But there was a truck there, so he had to turn around it.

Q. I see. And at what point did the officer, or this guy, come out of 215?

A. They came out face to face.

Q. In other words, the officer came out of 215 at the same time that Powell was where?

A. Coming from around the truck, walking straight into the front of 215.

Q. On the sidewalk.

A. Yes.

Q. Are there any steps in front of 215?

A. Yes.

Q. How many?

A. About three.

Q. Three. Now, did the officer come down the steps?

A. No. He was staying on the stoop.

Q. He was staying on top?

A. Yes.

Q. He was on top?

A. Yes.

Q. And he came out of the building and stopped on the top?

A. Right.

Q. And Powell came when? What happened then?

A. Powell came right up to the bar[?] [...] right about there.

Q. There meaning right to the first step?

A. Yeah. The policeman shot him.

Q. The policeman was standing on the top of the step -- on the top step?

A. Yeah. And Powell was, you know, standing in front of the first step, like as if he was going to walk up the step.

Q. He looked like he was going to walk up the step.

A. Yeah. Now as I saw it--

Q. Where were you at this point?

A. I was still standing in front of 220.

Q. In front of 220. Now that's across the street--

A. No. That's still on this side of the street, right about over to here.

Q. On the same side as 215?

A. Yeah.

Q. 215 and 220 are on different sides of the street.

A. 217. I think it was 217 'cause it looked like a new building, just re-painted or something.

Q. All right, so let's see. There's 215. Then next door to 215 there is the radio repair shop.

A. Yeah. On that side. And on this side is the cleaners.

Q. On the other side is the cleaners.

A. Yes.

Q. And then where were you?

A. Then comes the 217 that--

Q. So ~~we~~ you were two doors away from 215?

Q............

A. Yes. /I see. Where were you? Next to the building or next to the road?

A. I was standing on the sidewalk.

Q. Near where? Near the road, or near the building?

A. I was right about in the middle.

Q. So when Powell approached the sidewalk -- when Powell got on to the sidewalk -- you were on his right side?

A. Yes.

Q. I see. And what happened?

A. He walked up--

Q. As if he was going to walk up to the building itself?

A. Yes. And the off-duty patrolman didn't say a word. He didn't say nothing. He just took out his gun, shot him one time--

Q. You saw him take out the gun?

A. Yes. He took it out his pants' pocket.

Q. What pocket?

A. Let me see. If he was standing here, he went into his right pocket -- or his left. I'm not sure. I'm not sure.

Q. Well, what hand did he shoot him with, his left or his right?

A. It looked like his right hand.

Q. Shot him with his right hand?

A. Yes.

Q. Was the pistol in his pocket or his belt?

A. In his pocket. I saw him go into his pants' pocket and pull it out.

Q. If you were on Powell's right side, then you were on the officer's left side.

A. Yeah.

Q. So his right hand pocket would have been covered by his body. But you saw him put his hand in and pull out the gun?

A. I saw him pull out the gun.

Q. I see. When did you first notice Powell?

A. When I saw him come in front of the building.

Q. You didn't see him in the road, then.

A. No.

Q. You just saw him in front of the building.

A. Yeah. I saw him first, you know, over there talking to some boys.

Q. Powell was talking to some boys?

A. Yeah. But he came across the street by himself.

Q. Did you see him come across the street?

A. I couldn't see him come across the street--

Q. But then you never saw him across the street talking to the boys?

A. I saw him, 'cause, you see, when I was coming across the street, you see the girls were standing over there in front of 217 [...] you know, 213, they called me over first and we started talking.

Q. In front of 217?

A. Yeah. Then there's a truck there -- a Volkswagon -- and then that's where Powell came around that way, he came.

Q. Did you *see* Powell come around?

A. I saw him turn from the truck, from the side of the truck, he come up to the sidewalk.

Q. Are you sure that Powell never went into the building?

A. I'm not going to say I'm not sure, because I was/not paying that much attention. I saw him come across 'cause I was standing in the way to see him. The girls had their face to me and their ~~a~~backs to Powell, and I was looking--

Q. Which girls were they?

A. I don't know. They was two girls.

Q. Do you know their names?

A. Uh-huh. One of them girls from CORE, not this one here, but another one, has their name and address. 'Cause there was three of us, you know, standing in the same place over there.

Q. I see. But you were standing-- You were watching this whole thing?

A. Yes. I didn't see Powell go into the building, but he must have.

Q. Well if Powell went into the building, then what do you think he did? What do you think he did after he went into the building?

A. He probably went in there. He probably fooled around with the superintendant, then came back out.

Q. And then what did he do?

A. Then probably that's when-- When he came back out, that's when the cop shot him.

Q. Well you said you saw him going from around the Volkswagon towards the stoop. So you think maybe he--

A. He could have went into the building then.

Q. Do you think he came out from the building--

A. Yeah. That's where the cop--

Q. Into the street again?

A. Yeah.

Q. But you saw him come from the street up to the stoop.

A. Near the first step. Then I didn't pay no attention then. After that-- There I guess he went into the building, then came back out.

Q. Oh, so wait! When you first saw him go from the street, around the Volkswagon, and up to the bottom of the stoop -- at that time the cop wasn't there?

A. No.

Q. No. Then what happened? Then you didn't see--

A. I didn't see him go into the building nor come back out.

Q. What did you see?

A. Well, now, after that--

Q. Or did you just look away?

A. I wasn't paying no attention after that he went to the first step[?].

Q. When was the next time you saw Powell ?

A. The next time I saw Powell, was when Powell was laying face down on the ground.

Q. When was the next thing you noticed?

A. This white cop was coming out -- white shirt and all -- and he stood up on the stoop. And he shot Powell in the stomach.

Q. You saw Powell standing there?

A. Yes. I saw Powell come back out. Powell was doing just like that.

Q. He was, what, clapping his hands?

A. Washing his hands like that, like if he had something on his hands.

Q. He didn't see to be talking to the cop?

A. No.

Q. I w just want to go back and get one more thing. You said you saw Powell go up to the stoop, and then you kind of looked away,and looked and saw something else. Then the next moment you saw Powell was when?

A. Well, when he was standing outside on the sidewalk, going like this.

Q. How long after was that?

A. That was about -- say, about five minutes.

Q. About five minutes after you saw him approach the stoop?

A. Yeah.

Q. You didn't see him again until--

A. Until he came back outside.

Q. Did you see him come back outside?

A. No.

Q. You didn't see that?

A. No.

Q. But you just saw him standing there. And where was he facing?

A. He was facing, uh, on an angle like this.

Q. Was his [...] toward you?

A. Yes. And he was just, you know, wiping his hand like that, like if he had something on his hand, he was just going like that. So then, that's when I saw the policeman come out.

Q. You saw Powell do this, though?

A. Yes.

Q. You saw the policeman do what?

A. And then the policeman came out. And I saw him reach in his pocket and pull out the gun. And Powell started shaking his hand like that, like as if he was saying, "No, no, no." And then the cop shot him in the stomach the first time. Powell went down--

Q. How do you know he shot him in the stomach?

A. Because see the way his gun was holding, Powell did like this.

Q. Oh, I see. So after the first shot, Powell held his stomach with both hands.

A. Yeah. And then after that Powell hit the ground. He fell to the ground. And he just put-- The cop for no reason like that just put two more bullets in him.

Q. Where was he when the second shot was fired?

A. On the ground, face down.

Q. He was completely on the ground when the second shot was fired?

A. Yes.

Q. I see. And then.

A. When the other two shots, you could tell he had a--

Q. How many shots were there? Three or four?

A. Three. And when he shot him, you could tell where the bullets was hitting him because he was jumping just like that, you know.

Q. Where did the second shot hit him?

A. It looked like both of them hit him in the back. Two of them hit him in the back.

Q. But you didn't see?

A. No. And then Powell just, you know, lifted his leg up slowly, you know, off the ground. Then after that it looked like, just like when you see somebody stand up there, right there in front of you, die. Just like that.

Q. Before, you said that the next time after you saw Powell go up to the steps, then you lost sight of him -- the next timeyou saw him was when he was on the ground.

A. The next time I saw him was when he came out. If he was in the building, he came out. I looked back, and that's when I saw Powell like this, doing like this.

Q. Right. I just wanted to--

A. Then when the cop came out and took out the gun, Powell was shaking his hand like this, saying, "No, no, no." And the cop just gave him one piece of lead--

Q. Now, at the time the cop took this out, Powell was where? Exactly where was he standing?

A. Powell had turned around and looked at right exactly in front of the cop. Just like you and I.

Q. Where was he standing now?

A. Near, uh, say, uh [...] garbage can.

Q. Where in relationship to the steps of that building?

A. In front of the steps, about three feet away from the first step.

Q. I see. About the center, or the left or the right?

A. Right about in the center.

Q. Right about in the center. And the cop was where when he fired the first shot?

A. Right on the top step.

Q. So there was how much room, would you say, between Powell and the cop?

A. Three, four feet.

Q. Well, three or four feet would be about from where I am to you. Would that be about it?

A. Just about. XXXXXX Maybe we'll say about a good five steps.

Q. Okay. Let's see. One - two - three - four - five.

A. Just about that far.

Q. Now how many steps was Powell away from the stoop?

A. About two steps.

Q. Two steps or two feet?

A. Two feet away.

Q. Okay. So the stoop was here, and Powell was standing here, and the cop was up--

A. On the x top step.

Q. And then he pulled out the gun?

A. ~~And~~ Yeah. And Powell slowly backed off and shaking his hand--

Q. You were still standing in the same spot?

A. Yeah.

Q. You didn't move?

A. No.

Q. That would be two houses away.

A. Yeah. Two buildings away.

Q. About how many feet would you say that would be?

A. Fifteen, twenty. About a fgood fifteen feet.

Q. Well, fifteen feet is the length of this room.

A. Yeah, that's just about as far.

Q. You said you were two buildings away?

A. Yeah.

Q. Well a building has to be wider than this room, doesn't it?

A. Not all the time, you know, the entrance by itself, you know. Cause there's the cleaners, then there's 217.

Q. So it was about fifteen-- You were pretty close?

A. Yes.

Q. I see. When you noticed Powell backing off with his hands up, where was his hands?

A. They was just straight, just like--

Q. Over his shoulders, or under his shoulders?

A. Just a little under his shoulders -- no, about, over his shoulders, about that much.

Q. And he was shaking his hands?

A. Just like that.

Q. Sideways, back and forth?

A. Yeah.

Q. Was there anything in his hands?

A. No. I guess he had dropped the beer can in the street.

Q. Did you see him drop the beer can?

A. No, I didn't notice when he dropped the beer can. I was just watching what happened.

Q. All right, and then what happened?

A. The cop shot him one time, Powell put both hands over his stomach, and he fell to the ground. And the cop shot him two more times.

Q. Did the cop move at all at any time?

A. No, he was standing right in the same place.

Q. On top of the stairs? On top of the steps?

A. Yes. And then after that, he reached into his pocket and he pinned a badge right about here.

Q. What did he do with the gun?

A. He put the gun back in his pocket.

Q. Which pocket did he put it back into?

A. Uh, the left pants' pocket--

Q. The left or the right?

A. I'm not sure if it's left or right. I was shouting[?] around at this group and I didn't look around.

Q. Did you notice which pocket he took the badge out of?

A. No, I didn't notice. It looked like he probably went into his shirt pocket and pulled it out.

Q. And then what did the cop say?

A. And then the cop say, "I'm a patrolman." And then he [...] there and started grinning.

Q. He said, "I'm a patrolman?"

A. Yeah. He said, "I'm a policeman" and then he started grinning.

Q. And then what happened?

A. And then after that, you know, everybody started yelling and everything. And he said, "Wait till we turn him over, you'll find a knife under him."

Q. Who said that?

A. The policeman.

A. (Cont'd) And the main thing about it, he kicked Powell after that. And then after that he kept on saying, "Wait till we turn him over, you'll find the knife" and all that junk. When they turned him over, where was the knife? There was no knife there under him. So, after that, that's when the police came and everybody started rioting and everything.

Q. When the cop kicked him, did he seem to be kicking him to, like, hurt him? Or did he seem to be kicking him like he wanted to turn him over?

A. No, like if he wanted to hurt him. He just looked at him with a nasty look, and just kicked him just like that.

Q. I see. Why don't you just, you know, try it on me. How would you kick?

[Noises of people moving in room cover words]

A. I would just kick you in your face, you know, just very mean.

Q. He kicked him in the face?

A. He kicked him in the head.

Q. I see. Who were you standing and talking to? Which girls?

A. I ~~knew~~ don't know their names?

Q. Would you know them if I told you them? Could they be a Rosalie and a Shirley?

A. No. I know Rosie and Shirley. They wasn't them.

Q. Do you know these girls, though?

A. I know 'em if I see them. I usually [...] with them every day, you know.

Q. Do you know any other people who were there and who saw this?

A . [Mumbled]

Q. Oh, Tony.

A. Yeah, Tony.

Q. You don't know anybody else specifically that saw this?

A. No.

Q. Well, look, I would appreciate it very much if you could, you know, if you see anybody that you were speaking to that day who say that.

A. Well, one of the girls from CORE had their name and address.

Q. Well, I'm sure they'll try to contact us, but I would appreciate it if you could ... [tape goes off].

Q. Your name, please?

A. Louis Smith.

Q. Your address?

A. 6228 [?] Green Street, [?] 24, Pennsylvania.

Q. All right, Mr. Smith, you said at approximately 4:00 A.M., or a little bit later this morning, you saw an incident at the Harlem Hospital?

A. Yes. Many incidents.

Q. Could you describe this, please?

A. Yes. It may have been a little later, because it was starting to get light. A police car drove up with a woman, who was obviously injured. The police got in the car, pushed the woman out, then drove away and left her on the pavement [...] carried her into the police-station.

Q. I see. And at this time you were where?

A. I was in the little ante-room at the Harlem Hospital -- it's actually on 135th Street, I believe. I was by the window, just right against the pavement, no more than about 20 feet from where this incident took place.

Q. Who was in the ante-room with you at that time?

A. I believe Gladys Harrington [?] was in the room with me. I do know that an Alice Miller was out on the pavement. I'm sure she could identify.

Q. I see. Both Alice and Gladys did see the entire incident?

A. They saw the incident just as well as I did.

Q. Did you get any information -- or do you know people who do have information -- as to the number of the police car and what precinct they were from?

A. Yes. Alice Miller has it, and I believe Gladys Harrington has it. They got the license number and the car number.

Q. Did you know the name of the woman, or find out later on?

A. No. I didn't, but they did.

Q. Alice Miller and Gladys have name of the woman herself?

A. Right.

Q. Did you find out how bad her injuries were?

A. No. They carried her into the hospital.

Q. They did?

A. I was in the room and was afraid to go outside; afraid the police wouldn't let me back in.

Interviewer: All right. The information I have been given on this: The policecar was No. 1782 from the 42nd Precinct.

Q. All right, now this is an incident we'll number Four; the witness is still Mr. Louis Smith. Now, Mr. Smith, in this incident, you said it happened around what time?

A. Oh, boy, I'm getting lost on time, because I went in there some time--

Q. You said it happened before Incident #2?

A. Yeah, it did happen before Incident #2.

Q. I see. At this point, where were you?

A. I was in the anteroom which adjoins the driveway for the ambulances when they bring them in.

Q. That's the same anteroom as you were in before?

A. The same in Harlem Hospital, as I was all evening.

Q. I see. And can you tell us what happened?

A. The drive got a call. Well, the man on the phone took the call and he said "Another shooting." They sent the ambulance out. When the ambulance came back, it backed up and it had two people in it: one male, shot, I believe, in the lower right abdomen, and he had this woman who was screaming and crying and she was screaming, and she was shot right in the groin, somewhere. She had on slacks, white slacks, and there was just a little bloodstain right in her lower groin. And she was screaming. And the ambulance driver got out, and he ran into the anteroom and hollered that this woman hadn't done anything, he said. And he was very emotional, and he said, they was just out there and they was just shooting indiscriminately all over the place; and he said this woman wasn't doing anything but trying to get in a taxicab and they shot her. And he just ~~said~~ sat down in the chair and he cried.

Q. Do you know who the attendant or the ambulance driver was?

A. No. But I think it's on file in the records of Harlem Hospital. He was a Negro, short, dark-skinned.

Q. And the driver?

A. Oh, that's who I was talking about -- the driver, who cried.

Q. And the attendant?

A. The attendant was the man who was there with me there all evening, who let me come in the room and who let me go out and view each victim when it would come in, and then lock me back in so the police couldn't put me out. I don't know his name.

Q. I see. Is this the attendant who answered the telephone?

A. Yes. He answered the telephone and he was very sympathetic because he wanted us to get the information, because he was afraid they would just whitewash all that had happened that evening.

Q. I see. Now, Mr. Smith, regarding the locking you in the room: Can you ~~xxxx~~ explain what happened, the situation in which you were locked in the room and how this attendant was friendly to you?

A. [Tape bad - reply unintelligible.]

Q. All right, this we'll label Incident #5 -- Louis Smith still talking. Now, Mr. Smith, in this incident that at approximately 125th Street and Lennox Avenue it occurred?

A. Yes. I walked down with Ennis.

Q. Ray Ennis?

A. Yeah. And we were going out and trying to find people who had been hurt and short of set up a first aid station.

Q. This was about what time?

A. Oh, I know it was after midnight. And in approximately the vicinity of 125th and Lennox, I walked down on the corner, and we had heard this shooting before we got down there. And when we got down there, there was a lot of confusion in the street.

Q. I see. What corner was this where you heard the shooting from?

A. Well, we were, let's say, halfway the block of 125th Street between Seventh and Lennox. We found this Negro; he was standing on the pavement and he was sort of dazed. And he kept saying, "They shot me! They shot me!" And he was just standing there, sort of turning in circles and kept saying he was shot. And I saw a cop just walk up and hit him in the head and split his head wide open. And blood was running out of his head then, and it was running out of his shoulder -- and that's where he said he was shot -- so Ennis and myself, we grabbed him and said we gotta get this man to a hospital. At first the cops didn't want to do anything.

Q. How many cops were there?

A. Oh, I don't know. There was cops just milling all around.

Q. About how many?

A. I don't know, honestly. There were crowds in the street. And so we insisted that this man go to the hospital. And there was an ambulance sitting in the street at that time. A police ambulance, an emergency-type van. So they said we'll take him. And then, you know, they started pushing him toward the ambulance. And they said, "We'll only let one of youse go."

Q. Who said that?

A. One of the policemen, I don't know who he was. So when we got to the ambulance, they let me get in with him. In the ambulance, there was another fellow laying on the floor on a stretcher, with a shot in the back. We set this guy up on the bench on the side. They closed us in, and I went to the hospital with him. When we got inside, they put him on a stretcher. I followed him in, and that's when I saw the orderlies there -- two orderlies, two mops and one bucket -- sweeping the blood back off the floor, with the mop picking it up and putting mop bucket. So, I don't know, they wheeled this guy away, and I wanted to use the phone. So I asked one of the attendants where the pay phone was. He told me, and I went around to make a pay phone call, And another attendant came over and said you could make a phone call out of the office. He led me out right where the ambulances come in, into this little room, where the slips [...] when they bring people in are checked in and written in the book. And he told me how to use the phone by dialing 9 and then dialing outside. He told me to say in there because people should [...] what was going on out there tonight. And he locked the door, and he let me stay in there and make calls. And he let me stay in there all evening, incidentally, because he said if he opened the door the cops would come in there and put me out.

Q. I see. Had the police attempted to get anyone out?

A. Yeah. They were putting everybody out of the hospital at that time.

Q. Who was in there at that time with you?

A. Only one I know was myself. There was a lot of other people standing there looking at people being brought in. But no other CORE members that I could recognize. Later Jim Farmer came, and Gladys Harrington, and they let them in, and then another fellow associated with the press -- a Negro -- they let him come in.

Q. I see. You say that the desk attendant who was helpful and friendly to you, he was an advertising man?

A. He mentioned something about this, that he was showing me something on the callendar and said that's the type of work he does. I know this, that when I called one of the news stations and they said they'd have to verify the story, he did get on the telephone and he said, "Well, I'll verify it. I'm the guy checking them in." When I was talking about the six gunshot wounds that we'd had at that time.

Q. Do you know what radio station or person he spoke to?

A. No, I don't. I don't remember.

Q. Now, from the-- You said, how many shootings were there?

A. Six.

Q. That were brought into the hospital?

A. Right. And there was one other shooting that the fellow that came back in the ambulance told us -- I think he's a police surgeon, because he's the one that had to pronounce the man dead. He said he was shot between the eyes and they wouldn't bring him to Harlem Hospital. They told him to take him to Bellevue and to keep quiet about it.

Q. I see. Now, what type of police van or wagons or ambulances brought these people in.

A. It was a large, very dark color. I don't know whether it was blue or black. And they have one bench on the right-hand side.

Q. I see. Could you identify them as one particular type. For example, the tactical police force?

A. I don't know that much about the New York police force, to know whether they belong to the tactical or not. I know they're large vans similar to the type we used to call "paddy wagons."

Q. I see. All of them were brought in this way?

A. All the gunshots. There were a lot of people that were injuried that came in by taxi, by automobile, and some of them just walked in. But the gunshot wounds all came in by ambulance.

Q. And this attendant has all the information?

A. He has all the information written down in his book. I saw it written down. And it was also written down on little pink slips where they [...] like a little time clock that stamped the time they were brought in. So this information is on record at the hospital.

Q. All right, this incident we will number Incident #7. This happened at approximately 9:00 A.M. The witness is still Mr. Louis Smith. Mr. Smith, can you explain what happened?

A. Well, about 9:00 this morning, we had stayed up all night, and we were here in the CORE office, 12307 125th Street. We heard sirens go by, and somebody said there were some more problems again at Lennox Avenue. Mr. Ennis and myself walked down to 125th and Lennox Avenue, at which time we received word that the police had shot a guy for attempting to take something out of a pawn shop, that the window was broken. We don't know; I didn't see the man shot. I heard conflicting stories that the man shot was not the man that took it, or so forth. But that I can't testify to. I can say this, that we decided, at this point, since there were no police guarding the window; there were about 100 police in the block. They were on the center strip and they were on the other side of the street. And they were watching this building. And we felt that they should be standing in front of the building. So we did. We stood in front of the building--

Q. Who's "we"?

A. Mr. Ennis and myself.

Q. Was there anybody else, or just the two of you?

A. One other person was there, and Mr. Ennis can identify him. So we pushed the people away from this window, and we told them that don't go over there; it looks like it's a trap. They're waiting for you to reach in this window and grab something, then they're gonna just come and shoot you.

Q. Who said that?

A. I said that. And we got the people away from this window. By that time about 10 or 15 police came over. They walked up to us, and a

~~wh~~ white -- I know he had gold bars, so I imagine he is a lieutenant --
owner ~~manager~~ He asked me if I was the manager
he said, he asked me if I was ~~owner~~ of the place,/and I said no, I'm a member of CORE and I'm here trying to keep these people away from this window so there will be no more shooting, since you all won't come over here and protect the property. At which time he said, "Git 'em outta here." And somebody punched me in the back, one of the policemen.

Q. How many police were in this group with this white lieutenant?

A. About ten or 15, a good number, you know. They look like an army when they're coming at you. And they didn't tell me to move or anything, except "Git 'em outta here," at which time I was punched. At that same instant, a Negro captain by the name of Searles [?]

walked in, and he said, "Leave them alone. They're part of CORE and they're trying to help." And he moved the police away, which gave me a chance to explain to him, you know, what we felt would be helpful -- if a cop would stand in front of the window. Don't wait for people to reach in and then shoot them. Put a cop in front of the window so nobody would reach in in the first place. Let's prevent it. And he agreed that this was a good tactic, at which time he did this. And a related incident: Just before he put the cop there, two Negroes walked down the street and, in the building right next door to it, they lifted up the cellar gates and they started to go down the steps.

Q. They did this still while you were guarding the window? Before the police came?

A. No, after the captain had removed the police away from us. I walked over to them and I told them, "Don't go down there, 'cause all they want you to do is go down there and shoot you." They had made no attempt to stop them from lifting up the cellar gate; they made no attempt to stop them from starting to go down. So they explained to me that they were the superintendents of the building and they were going down in the basement. So I said, "Okay." As soon as they got down in the basement, the police started charging across towards them.

Q. How many police were there charging?

A. There must have been about 10 or 15, heading right for this cellar. So, they saw the whole thing, but they didn't move until they went into the basement. Then the captain walked in front of them, and he said now, "There's no need to go down there. The CORE man said they said they are superintendents. I'm going to station one man at the top of the steps. When they come up, you question them and find out. We don't have to run down there now." And he stationed a man there. When they came up, they satisfied the police that they did belong on the premises. My feeling is that they would have either run in that cellar and they would have either shot or wounded these people. At this time is when the lieutenant agreed to put somebody in front of the window, and agreed that whenever we found windows that weren't guarded to let him know and he would put people in front of these windows.

Q. And thereafter there was no difficulty at that spot?

A. Thereafter we didn't have any difficulty at all at that spot and we were able to leave.

Q. You left at approximately what time?

A. Oh, I guess we were there at least an hour.

Q. So that would be at least until 10:00 or 10:30 until you left?

A. [Tape garbled.]

Q. I'd like to put this at the top of the interview, if we can sneak it in. [Sorry...] Mr. Smith, what is your job?

A. I'm the Director of the Department of Organization of CORE, nationally Mr. Jim McKane.

Q. Mr. Jim McKane is the--

A. He is the Director of Chapter Organization.

Q. I see. And how old are you?

A. 35.

Interview w/ Lollin [?] Williams

Q. Your name is, please?

A. Lollin [?] Williams.

Q. And your address?

A. 782 Hewitt Place, Bronx.

Q. Mr Williams, are you a member of CORE?

A. Yes.

Q. What chapter?

A. New York Chapter.

Q. Can you explain what you saw last night, and approximately what time?

A. Well, they called me about two o'clock. I got here--

Q. Who called you?

A. The office called me. They called me from New York CORE's office to come down and see what we could do to give aid to people who were being hurt. And, of course, I came right down.

Q. About what time was this?

A. About two o'clock it was, yes. And as I came along, 125th Street comparatively [?] quiet.

Q. I see. How did you come down?

A. I came by subway to Seventh Avenue, at which time I got out and walked up to 125th Street across to New York CORE. Very soon after I got in the area, Gladys and a couple of boys, kids, who had been beaten--

Q. Gladys who?

A. Harrington. Community Relations Department of CORE. They had been out on the street looking around, and these kids had been beaten and bloodied.

Q. How many children?

A. There were three boys, I believe. Two were-- one was badly beaten and the other had been shaken.

Q. [Tape bad]

A. [...] we rushed them to medical center as quick as we could.

Q. Which center was that?

A. [...] a hospital [...]

Q. Who took them?

A. Gladys Harrington and our Community Relations [...].

Q. Did you walk them over?

A. No, no. We took them in a cab to the center. And pretty soon, again, another man came in who had been beaten and blood was streaming all down his face and head. He had just come from work and didn't know what was going on xx in the community. Without any provocation at all, the police just x jumped him and struck him across the head.

Q. I see. Where did this incident occur?

A. I don't know where they was. I was in the office, as I said, at the time, when they were brought in.

Q. They didn't say where they were?

A. Yeah, we have a record of them, we have a record of them.

Q. Gladys has a record of all the people who came in?

A. She has a record. Now, after which, Marshall [?] and I decided to get in the street and see what we could do to entice the young children, the youngsters, the teen-agers, to, if possible, get inside because we could see that policemen were shooting up the community, so to speak. They claimed they were not shooting people, but were shooting to scare people in, they were shooting in the air. However, we found that people were actually being shot.

Q. How did you find this out?

A. Well, we saw it, as a matter of fact. We had to take cover several times as we went along 128th Street toward Lennox Avenue. And while standing under cover there, we saw a girl shot. The police came along just shooting at random. Just shooting, period.

Q. Well, in this situation--

A. [reply and question overlap on tape]

Q. Well, in this situation, how many police were along 128th Street.

A. Oh, we couldn't tell.

Q. Indiscriminately shooting?

A. You couldn't tell. It was-- we-- we saw at a distance, about 100 yards away, people [...] the policemen, youknow. We know that the policemen were doing the firing because we could see them, could tell [...] and the people were running, some of them scattered. The object was to scatter the people and frighten them.

Q. This was 128th Street bet@een--

A. It's right on the corner of 128th Street.

Q. You were walking between--

A. No, we were taking cover just off Lennox. We saw when the barrage of firing started we went under cover.

Q. On what side of Lennox? On what side of 128th?

A. We were between Seventh and Lennox, walking on the downtown side of

128th. Before we reached Lennox, we were warned that the barrage of firing had started, and naturally we took cover.

Q. I see. At approximately what time was this?

A. Oh, it must have been about 3:00 or 3:30.

Q. Did you get any names or information as to who was shot?

A. No, we didn't get any names. I think we eventually knew who the girl was. I think the girl was brought into the hospital at the time Gladys was there with other patients. But that just happened to be one of the persons; we learned that four or five more had been shot right in that same spot, approximately the same area.

Q. And from 128th Street, where did you go?

A. We walked back to Seventh Avenue and got a cab. Then we circled around through 128th to Lennox and down to about 32nd Street and back up Lennox to 124th Street. I think it was 24th or 25th, and came back across town.

Q. What were you doing that for?

A. Well, we were observing, trying to see if there were kids out that we could talk to, to ask them to get in something. We figured that probably if we could encourage these children, these kids -- we couldn't say much to the adults, but we could encourage the kids -- that would certainly lower the casualty list if the police were going to shoot. If that was their object, to get the people off the street, we certainly wanted to do what we could to alleviate more casualties.

Q. When this girl was shot, did you see the police officer actually shoot her?

A. We didn't see the person who shot her. We knew she was shot and heard the shout, "She's been shot!" That's all, and we didn't go [...] because the police were scattering the people with their firing.

Q. I see. So you didn't realize the girl was shot-- you didn't notice the girl until someone yelled, "She's been shot."

A. We knew the girl was hurt; we could see her. We could see the girl. At our distance, we could see that the girl was already hurt, and we heard that she'd been shot.

Q. Did you see any other incidents of violence?

A. No. That was my only eye-witness, direct attack.

Q. Would you say that there was a substantial number of police that were shooting?

A. Oh, yes. There must have been at least a half-a-dozen or more policemen running and chasing the people with their firing.

Q. What did they seem to be doing, trying to get them inside?

A. They were firing, that's what they were doing, firing. Just firing away, barrages of shots, like machine guns.

Q. Were the police in a group or were they--

A. No, they were scattered around. They were out on the street, like policemen do. They were trying to corral the people back inside and pushing them from this-- You see the people had begun to congest on that corner. And they came in as a unit and forced them back.

Q. About how many people were on the corner at that time?

A. [reply undecipherable]

Q. Did they seem to be giving the police any trouble at that time? What was their conduct toward the police?

A. Well, there was nothing, so far as conduct was concerned, that-- We were a distance away and were approaching these people. We were actually going to see what was happening ourselves, but so far as conduct, I don't know. We observed the police come in and start firing and scattering this particular unit of people.

Q. All right, I just want to ask one more question. You said you took the cab down to--

A. We took the cab on Seventh Avenue [?].

Q. You took it down to what street number?

A. I think it was 128th Street, where we went across to the same point at which we had already started, then we went back to [...].

Q. Same general area?

A. Yeah. We were frightened back from the barrage of bullets.

Q. I see. After after you finished driving around in the cab, where did you go?

A. We came back to [...] and discussed things until things began to quiet down [...] to the office.

Q. All right, this is an incident we'll number Incident #3. It involved the killing of a man on 126th Street and Seventh Avenue in a building, we believe. All right, your name is, please?

A. Commodore -- James Commodore.

Q. And your address?

A. 668 Riverside Drive.

Q. All right, Mr. Commodore, you saw an incident take place on 126th Street and Seventh Avenue?

A. That's correct.

Q. About what time was that?

A. I imagine it was about 3:00 A.M. I'm not completely sure.

Q. Where were you?

A. I was directly across the street from the building that the incident took place.

Q. Where was that?

A. In a restaurant on the northeast corner of 126th Street and Seventh Avenue.

Q. Were there other people that you knew in the restaurant with you?

A. Right. Namely, the employees.

Q. I see. Did they watch this incident?

A. Right.

Q. Do you know their names?

A. Yes, I know their names, but I don't want to involve anybody.

Q. Well, as I say, this is not going to be a question of involving. We're just going to just-- You understand what we're after in this case.

A. I know, but I don't care to give their names, because they might not want me to.

Q. All right, fine. Now, can you tell us what happened, how this evolved?

A. The police were gathered at the southeast corner of 126th and Seventh Avenue. A man came from 126th Street, from the direction of Lennox Avenue, and threw something around the corner, so to speak, at the policemen gathered there. Then he ran, and he ran into a building, the first building on the corner of 126th and Seventh Avenue on the southeast side.

Q. What number building did you say that was?

A. I believe it's 174.

Q. 174 West 126th?

A. Right. Several policemen chased him into the building.

Q. I see. Can we back up for a moment? How many police were there at the corner at the time?

A. There must have been about 10 or 12.

Q. I see. And you said there was a group across the street?

A. There was a crowd of people on the opposite corner from the policemen. They were taunting and jeering and hollering insults at the police.

Q. And thereafter this man--

A. And during this, this man threw something at the police. It might have been a bottle, a can, I don't know what it was.

Q. All right, then after he ran into the building, what happened?

A. The policemen chased him.

Q. How many policemen?

A. I don't know exactly. Three ~~of~~ or four, maybe.

Q. I see. How were they dressed? As ordinary policemen, or were they--

A. No, they were wearing white helmets. White-- yes, they were wearing white helmets. They chased the man into the building and the man didn't come out. They didn't bring the man out. A couple of policemen came out, but they didn't bring anyone with them. Then--

Q. Well what type of movement was there with the police?

A. Well, I wasn't observing that closely. I don't know-- What do you mean by what type of movement?

Q. Well, were the police moving in and out continually in this building?

A. Not that frequently, no. I couldn't say that they were moving in and out. I don't know how often they went in and went out, but they went in more than once and came out more than once. I couldn't venture to say how many times.

Q. I see, all right. And then what happened?

A. Oh, after about an hour or forty-five minutes or so, an ambulance came.

Q. What kind of ambulance was that?

A. It was a city ambulance. I would assume that it was from the Harlem Hospital. I don't know what hospital it was from. The ambulance personnel went upstairs into the building and maybe, approximately a half-hour later, a police emergency vehicle arrived.

Q. They carrying something out?

A. They took something out of the vehicle. I don't know what it was, but they carried it upstairs into the building. They were up there, maybe, another half-hour. And shortly after that ~~another~~ a unmarked police car arrived. And about three distinguished-looking gentlemen, dressed in civilian clothes, got out. They didn't go into the building; they just stood outside. The police then cleared the area of all pedestrians -- well, as many as possible -- and, maybe, about five or ten minutes after that they brought out what appeared to be a man on a stretcher. They brought him out feet first, and he was covered entirely with a sheet. At the end of the stretcher, where his head should have been, was bloody. They put the man in the ambulance and took him away.

Q. They put him in the ambulance, or the emergency vehicle?

A. They put him in the ambulance.

Q. I see. Do you know where they took him?

A. I have no idea.

Q. Did anyone mention anything?

A. No. Just the observers.

Q. Just what observers.

A. The civilian observers.

Q. What did they say?

A. Well, what a shame [...] beat to death [...] chased him in the building and shot him.

Q. Do you know what these people looked like? Do you have any idea? These civilians who said that.

A. Well, some of all [...]

Q. I thought you said the civilian -- the police officials said that.

A. Oh, no, no, no. We were inside the building and they were outside. I don't know what they were saying.

Q. I see. All right.

A. LORRAINE GREEN

Q. CAN YOU SPEAK A LITTLE BIT LOUDER, PLEASE?
A. MY NAME IS LORRAINE GREEN.

Q. WHAT IS YOUR ADDRESS?
A. 109 E. 100th STREET.

Q. WELL, LET'S JUST START OFF BASICALLY, WHAT HAPPENED? WHAT TIME DID IT HAPPEN?
A. DO YOU MEAN THE SHOOTING OR WHEN IT FIRST STARTED?

Q. WELL, EVERYTHING THAT LED UP TO IT, THE WHOLE SITUATION
A. AT FIRST THE BOYS WERE SITTING ON THE STOOP AS USUAL

Q. HOW MANY BOYYS.
A. I GUESS THERE WERE ABOUT FIVE.

Q. FIVE BOYS
A. STANDING AROUND AND SITTING ON THE STOOP.

Q. STTING ON WHAT
A. SITTING ON THE STOOP

Q. WHAT STOOP WERE THER SITTING ON?
A. THE STOOP IN FRONT OF THE HOUSE, I DON'T KNOW WHAT THE NUMBER IS

Q. OH, THEY WERE SITTING ON A
A. ON THE SUPER'S STOOP. I DON'T KNOW WHY HE GOT MADE, BECAUSE I KNOW THAT THIS SCHOOL, WELL THE CHILDREN THAT GO TO THIS SCHOOL DURING THE SCHOOL SESSION DURING THE RECESS, THEY GO AND SIT ON HIS STOOP AND JUST AFTER HE CAME OUT AND HE STARTED ARGUING WITH THE BOYS AND WATERING DOWN THE STREET.

Q. IS THIS HIS REGULAR JOB, WATERING DOWN THE STREET?
A. I'VE NEVER SEEN HIM WATER DOWN THE STREET BEFORE.

Q. WHAT WAS HE USING? A REGULAR GARDEN HOSE?
A. YES HE WAS.

Q. ABOUT WHAT TIME WAS THIS?
A. I GUESS IT WAS AROUND 9:15 or 9:00 O'CLOCK.

Q. IN THE MORNING?
A. LET'S MAKE IT 8:45.

Q. I SEE. THAT WAS YESTERDAY.
A. YES IT WAS.

Q. ALRIGHT. THEN HE CAME DOWN AND STARTED ARGUING WITH THESE BOYS. DID YOU HEAR ANYTHING THAT HE SAID?
A. I KNOW THAT HE SAID, YOU HAD BETTER GET OFF OF MY STOOP OR I'LL TURN THE HOSE ON YYOU. AND SO, THEN THE NEXT THING THAT I KNOW, HE MUST HAVE SAID SOMETHING TO THE NEGRO BOY BECAUSE HE SAID, SON'T YOU SAY THAT TO ME AND THEN HE SPRAYED HIM WITH THE HOSE AND THE NEGRO BOY PICKED UP

Q. WHO MUST HAVE SAID SOMETHING?
A. THE SUPER, NO WAIT THE BOY SAID IT TO THE SUPER

Q. THE BOYY.
A. AND THEN THE SUPER SPRAYED THE BOY WITH THE HOSE AND THE BOY CURSED AT HIM

Q. WHAT BOY WAS THIS?
A. I DON'T KNOW HIS NAME, IT WASN't THE BOY THAT GOT KILLED. THEN THE BOY CURSED AT HIM, PICKED UP A GARBAGE TOP AND THREW IT AT HIM.

Q. HE THREW THE GARBAGE CAN TOP AT HIM.
A. YES HE DID. AND THEN THE SUPER KEPT SPARYING HIM WITH THE HOSE AND THEN

Q. HE WAS JUST SPRAYING THIS ONE PERSON ALL THIS TIME.

EVERYBODY, MOVE AWAY FROM ME OR I'LL SPRAY YOU WITH THE HOSE. SO WHEN I HEARD THIS I WENT ACROSS THE STREET TO SEE WHAT WAS GOING ON BECAUSE I SAID, OH THEY MIGHT GET INTO AN ARGUMENT OR SOMETHING. SO I WENT OVER THERE

Q. WERE YYOU DIRECTLY ACROSS THE STREET FROM THIS?
A. YES I WAS DIRECTLY, WELL I COULD SEE THE STOOP THAT THE POLICEMAN WAS STANDING ON.

Q. WHAT POLICEMAN?
A. THE LIEUTENANT. THE ONE WHO SHOT HIM.

Q. SO THIS WAS LATER ON.
A. YYES.

Q. WELL, AT ANY RATE YOU WALKED ACROSS THE STREET
A. I WALKED ACROSS THE STREET. I STOODNEAR THE STORE WINDOW, I GUESS I STOOD NEAR THE TREE AND HE SAID GET AWAY FROM THAT TREET

Q. WHERE IS THE TREE?
X. RIGHT IN FRONT OF THAT BUILDING?
A. NO, IN FRONT OF THE SOTRE NEXT TO THE BUILDING.

q i see. HE DOESN'T TAKE OF THIS BUILDING ALSO DOES HE?
A? I DON'T KNOW. HE TOLD ME TO MOVE AWAY FROM THAT TREE BECAUSE HE WAS GOING TO WATER IT.

Q. WHAT WAS GOING ON WITH THE BOYS NOW?
A. THE BOYS, I GUESS THEY WERE LAUGHING AND CURSING AMONG THEMSELVES.

Q. THIS WAS AFTER THE BOY THREW THE CAN?
A. YES, AND THEN HE STARTED WATERING THE TREE NEXT TO ME.

Q. WELL WHAT HAPPENED AFTER HE THREW THE CAN TOP AT THE SUPERINTENDANT?
A. THEY MOVED AWAY. THEY WERE AROUND, I GUESS YOU COULD SAY THEY WERE AROUND NEAR THE SUPER BECAUSE THEY WERE TALKING AMONG THEIR FRIENDS.

Q. WELL WHAT DID THE SUPERINTENDANT DO WHEN THEY THREW THE CAN TOP AT HIM?
A. HE JUST KEPT SPRAIYING THEM, YOU KNOW, AND CURSING.

Q. AND THEN THEY WALKED AWAY A LITTLE BIT?
A. THEY MOVED BACK A LITTLE AND THEN HE TURNED TOWARDS ME AND SAID, MOVE AWAY FROM THAT TREE, I'M GOING TO WATER IT AND I SAID ALL RIGHT WAIT A MINUTE JUST DON'T WET MYY SKIRT. SO I MOVED. AS I STARTED THE TREE IS ALSO NEAR THE EDGE OF THE SIDEWALK, HE STARTED SPRAYING THE TREE AS I STARTED TO MOVE TO THE EDGE OF THESIDEWALK. SOME OF THE WATER HIT ME, I DIN'T SAY NOTHING I JUST KEPT GOING ON. AND THEN THIS GIRL, SHE STARTED WALKING ON THE XXXXXXXXXX SIDEWALK AND HE STARTED SPRAYING HER LEGS. AND SHE SAID LOOK AND CURSED AND SAID LOOK AT WHAT THAT MAN DID, HE SPRAYED MY LEG, YOU KNOW AND THEN I THINK AFTER THAT THE SUPER WENT INTO HIS HOUSE. I DID NOT SEE NO BOYS RUNNING TO THE SUPER'S DOOR AND BEATING ON THE DOOR.

Q. DID THE SUPER WALK BACK TO HIS HOUSE BY HIMSELF?
A. NO THERE WERE SOME MEN OUTSIDE THAT CAME OUTSIDE AND TOLD THE BOYYS TO LEAV THE SUPER ALONE. I GUESS THEY LIVED IN THE BASEMENT APARTMENT OF THE HOUSE

Q. I SEE, WERE THEY NEGRO?
A. NO THEY WERE WHITE.

Q. WHITE
A. AND THEY TOLD THEM TO LEAVE HIM ALONE AND THEN HE CAME OUT THERE AND STOOD OUT THERE WITH HIS HANDS ON HIS HIP AND SIAD SO NONE OF YOU BOTHER HIM THEN THE SUPER WENT INSIDE.

Q. WHO SAID THAT?
A. THE MAN WHO LIVED THERE. THEN THE SUPER WENT INSIDE AND THEN I THINK THAT WHEN THE BOY CAME OVER ACROSS THE STREET. HE WAS OVER ON THE OTHER SIDE HE WAS ACROSS IN FRONT OF THE BUILDING. HE HAD THE KNIFE IN HIS HAND. HE WALKED IN THE BUILDING DOOR. AND THIS MAN WALKED OUT.

Q. THIS MAN WALKED OUT OF
A. THIS MAN WALKED OUT OF THE BUILDING AND THEN HE WENT BACK IN. THE BOYY

WENT TO THE BUILDING DOOR THAT THE MAN HAD GONE IN.

Q. WHAT MAN?
A. THE MAN WHO SAID HE WAS A LIEUTENANT. HE SAID HE WAS A DETECTIVE.

Q. WAIT A MINUTE YOU SAID SOME MEN CAME OUT AND TOLD THE BOYS TO LEAVE THE SUPERINTENTENT ALONE, AND THEN THE SPUERINTENDENT WENT INTO HIS HOUSE? RIGHT? AND THEN WHAT, THE BOYS STAYED THERE.
~~XXXXXXXXXXXXXWENT INTO THE BUILDING DOOR THAT THE MAN HAD GONE IN.~~

~~Q. WHAT MAN?~~
~~A.~~
A. NO, SEE THIS BOY THAT GOT KILLED

Q. THE BOY STAYED THERE THOUGH ON THE SIDEWALK.
A. YES.

Q. AND THEN WHAT HAPPENED?
A. AND THEN THIS MAN CAME OUT OF THE BUILDING AND SAID SOMETHING I DIN"T HEAR HIM.

Q. WHAT MAN WAS THIS? THE LIETENANT?
A. YES.

Q. WHAT BUILDING
A. OUT OF THE BUILDING WHERE THE BOY GOT SHOT.

Q. WHEN, WHERE WAS THIS? WAS THIS ACROSS THE STREET
A. THIS WAS ON THE SAME SIDE OF THE STREET , THE NEXT STOOP TO THE RIGHT

Q. WAS THIS IN FRONT OF WHERE YOU STOOD? IS THAT THE STORE IN FRONT OF WHERE YOU STOOD?
A. YES.

Q. SO AFTER THE ~~PX~~ SUPERINTENDENT WENT IN WHAT HAPPENED TO THESE TWO MEN THAT TOLD THE BOYS TO LEAVE THE SUPERINTENDENT ALONE?
A. I DON"T KNOW. I THINK THEY WENT IN TOO, I"M NOT SURE OR THEY WERE STANDING IN THE YARD. I DON"T KNOW, I DIDN"T PAY NO ATTENTION TO THEM. I DID"T SEE THEM.

Q. OKAY. THEN AFTER THE SUPERINTENDENT WENT IN, WHAT NEXT? DID THE BOY COME ACROSS THE STREET WITH THE KNIFE OR DIDTHE OFFICER COME OUT OF THE
A. NO, THE OFFICER CAME OUT OF THE BILDING. HE SAID SOMETHINGS, THE BOY CAME ACROSS THE STREET AND THE OFFICER WEMT BACK INTO THE BUILDING

Q. WHAT DID THE OFFICER SAY?
A. I DIDN"T HEAR HIM.

Q? WHAT DID HE SEEM TO BE SAYING?
A. THAT YOU HAD BETTER WATCH YOURSELF OR SOMETHING LIKE THAT. THEN THE BOY WENT TO THE DOOR. HE SHOOK THE DOOR THE DOOR WAS LOCKED
Q. THE BOY THAT GOT SHOT?
A. YES.

Q. HE CAME FROM ACROSS THE STREET? WHAT WAS HE DOING ALL THIS TIME?
A. I GUESS HE WAS OVER THERE TALKING WITH HIS FRIENDS, I"M NOT SURE. THEN HE CAME ACROSS THE STREET WITH HIS KNIFE, PLAYING WITH IT

Q. WHAT KIND OF KNIFE WAS IT?
A. A LITTLE KNIFE.

Q. SWITCHBLADE OR

A. NO IT WASN"T A SWITCHBLADE. A LITTLE KNIFE LIKE YOU GET IN A TEN CENT STORE IT WASN"T MUCH TO LOOK AT.

Q. YOU PULL IT OPEN.

A. I THINK SO, YES, YOU PULL IT OPEN. YES BECAUSE YOU HAD TO DO LIKE THIS. HE WENT TO THE DOOR, HE BACKED AWAY FROM THE DOOR the door was locked

E. and ~~xxxxed~~ closed the thing that he had in his hand/

Q What thing did he have in his hand?

A Closed the knife. And then the officercame out and I seen him do his hands like this and then the officer shot him.

Q. And then you saw the kid do what?

A. Gesture with his hands like this as if to say No.

Q. Did the officer have the gun in his hand?

A. Yes he did.

q. He came out of the store with the gun in his hand.

A. He came out of the building with the gun in his hand.

Q. The officer came out of the sotre and then went into the building? The superintendent's building? So there's the super's building and then another building and tehn the store. You never saw the officer come out of the store.

A. No. I ~~thing~~ thought he lived in the building. Anyway

Q. He went back into the building ~~we~~ after he told the boys to cut it out or whatever he told them. He came back with the gun in his hands, after the boy had tried to get into the super's building?

A. He didn't really try, he shook the knob and then he backed away.

Q. Well what did he ~~say~~ seem to be going over there for?

A. Well you know how some boys want to impress their firends. I figure that's what he was trying to do.

Q. I see. When did he close the knife.

A. He closed the knife as he was backing away from the door and then the man came out of the building.

Q. Is it possible that the officer saw the boy with the knife open?

A. It was not possible, it was not.

Q. Of course it is possible that the officer saw the boy with the gun, with th knife in his hand before he came out of the building.

A. Yes it was it really was possible.

Q. What kind of building was this that the police officer came out of?

A. It was an apartment house.

Q. What kind of doors did it have?

A. Glass, but it was made like old fashioned glass.

Q. But you could see through the glass.

A. Yes, you could see through the glass.

Q. But once you get in there, you can't because of the glass.
A. Yes.

Q. Well what kind of a room is in there?
A. Inside?

Q. Yes, is it a room?
A. No, it's not a room

Q. Is it a stairway?
A. Yes, I guess you could say it is a stairway.

Q. In other words, you go in a few feet and then there is a stairway?
A. Yes, I guess so.

Q. There is nothing in there beside that?
A. No.

AQ How wide is it? Is it as wide as this room?
A. No it is not.

Q. In other words it is just about as wide as maybe a stairway.
A. Just a little bit wider, just a little bit. He gestured to the man as if
he were saying no and the next thing the cop shot him, he went down and shot
Q. him and then shot him again.in the back.

Q. Wait, he shot him the first itme and the boy went like this and the cop
didn't say a word to him.
A. No He didn't say a word to him.

Q. You're quite sure he didn½t say a word to him.
A. Yes, because we were all standing there and we would have heard, and the
copy didn½t say anything to him. I could hear everything from that point
and I didnt hear him say anything. He gave no warning, he just shot him.
And when he went down he shot him again.

Q. So he shot him and the boy fell down? How did he fall, did he fall flat down?
A. He fell on his stomach.

Q. Yes, the second shot hadn't been fired yet.
A. Yes it had, no, he shot him, he fell, he shot him again and as he was going
down he shot him again. wjen he was down

Q. Hwo long an interval was there in between the first and the last shot?
A. Just like that (snapping of the fingers) he went just like that.

Q. The boy was flat on the ground after the second shot.
. Yes.

Q. And after the third shot, he shot right on top of him almost?
A. Yes he shot right on top of him

walk forward as he was shooting.
A: He was only about a yard away from him.

Q: So the policeman didn*t come ~~come~~ out of the building and simply stand and fire. He walked towards the boy?
A: He came out of the building, walked one step down. The boy was just about a yard away from him. He shot him.

Q: There*s more than a yard between the two buildings, ~~sir~~ isn't there ?
A: No.

Q: So the boy had gone over and shaken the door of the building that the police officer came out of.
A: Yes that's right.

Q: And he was standing down on the sidewalk.
A: Yes.

Q: How many steps up to the door?
A: I think there's three steps.

Q: Three steps.
A: Three steps or four.

Q:1 I see, and then you go into the building.
A: Yes.

Q The cop came down the stairs
A: One step down and then he shot him.

Q: Shot him from on the stairs?
A: Yes, and then after he did this, he put on his badge and he said, "I'm a detective."

Q: Who did he say it to?
A: I don't know. He just put on hisbadge, and he said that. Everybody was looking at him. I guess he was talking to us, you know.

Q: All these people were still around then?
A: Everybody was there. When they saw it, they just stood there and stared. The next thing, this girl fell on me, she had fainted, you know. I turned around; I thought it was one of his close relative s, you know. Then he took her into the building.

Q: He took her into what building?
A: Into the school, Junior High School.

Q: Across the street.
A: Yes

Q: I see, that's where.
A: Across the street. To think just a few minutes ago I had met the boy.

Q: You knew him, but not personally. After the shooting and the cop said "I am a detective" and this girl fell on you and she fainted, you took her across the street to the school. That is the last you saw.
A: Yes.

Q: After the policeman put on his shield and said he was a copy, then what did he do?
A: He took his foot and kicked him over.

Q: He rolled him over with his foot?
A: No, he did not roll him exactly. He took his foot and kicked him to move him over, like this. When I seen him again he was on his side. They told me later that this cop pushed him all the way to the side.

Q: But you just saw him on his side, and then the girl fainted and then you took her across?
A: Yes.

* * *

Q: What is your name and address?
A: Shelton Shipp, 225 E. 99th Street.

Q: About the time when this thing happened, what time was it?
A: About a quarter to 10.

Q: About 9:45, and you were where?
A: In the classroom and we heard some shots, the whole class heard it.

Q: How many shots did you hear?
A: I don't actually know how many shots; I heard something and somebody said it's just a firecracker. Everybody ran to the window. I had seen the boy fall on the floor.

Q: You were sitting in class. Where is your seat?
A: It's like in the middle aisle, I don't know, it's close to the window.

Q: How many aisles are you away from the window?
A: Two.

Q: From sitting in your seat could you see out the window?
A: I could, you could see out the window, but not good.

Q: What floor are you on?
A: The 4th floor.

Q: I see. So, from sitting in your seat, you couldn't see what goes on?
A: No.

Q: Let's try to take this chronologically. Everything that happened step by step. You are sitting in the class and you heard a shot.
A: Yes a shot, and I ran to the window and I saw the boy lying on the floor.

Q: By the time you got to the window how many shots had been fired?
A: I don't know.

Q: You said you heard shots.
A: A couple

Q: So you heard a couple of shots before you got to the window.
A: Yes.

Q: So you heard a couple of shots before you saw
A: Yes, before I saw the boy.

Q: I see and when you got to the window, exactly what did you see?
A: I saw the boy laying on the floor and this man standing behind him.

Q: He was lying on the ground already?
A: Yes and this man standing behind him. I ran down the stairs and I came to ~~whether~~ where the boy was shot, and I looked at the boy because the man had kicked him over.

Q: What man had kicked him over?
A: The detective, the man who was supposed to be the detective, kicked him over.

Q: Is that the one that shot him?
A: Yes. I looked at the boy and I saw this blood coming out of him and I started screaming. Right then and there I knew I had known the boy and before there had been some boys who were outside and this man was washing the car or the window or something in the store and he started spraying water on these boys.

Q: This was after the shooting?
A: No, this was before the shooting.

Q: You did not see this stuff?
A: No.

Q: Now, I just want to know exactly what you saw.
A: Oh, I saw the boy laying on the floor.

Q: He was lying on the floor when you got to the window?
A: Yes.

Q: Was he kind of stretched out head to toe? ~~or~~ Was he from the building to the sidewalk or running along parallel to thestreet?
A: He was running along paraellel to the street, because he was laying like this.

Q: I see. You know the superintendent's building?
A: Yes.

Q: Now, was he in front of the super's building?
A: Yes, he was close to it, he came down the stairs. Right after he came down the stairs, he shot him.

Q: Who came down the stairs?
A: The man, the detective who shot him. He was in front of the building where the detective came down the stairs.

Q: And ~~that~~ was his face facing towards the entrance or towards the stairs of that building?
A: No, no he fell in front of the TV shop and

Q: So he had fallen in front of the TV shop.
A: Yes, the boy's face was towards that way, but his ~~body~~ feet were at the building.

Q: His feet were facing the entrance to the building that the police had come out of? Now, his body was where, in front of the police officer's

building or the store, where?
A: The store, I don't know whether it was a TV repair shop.

Q: The body was actually in front of the TV repair shop?
A: Yes. I knew the boy I had met him a few days ago he did not seem the type who would do anything.

Q: I see, ~~you~~ but you did not see either the police officer shoot, you did not see the officer kick the boy over.
A: No, I did not see the boy kicked over, but

Q: When you got down there, the boy had been turned over.
A: Yes, from my window I had seen the boy, you know, like he was saying I didn't do nothing, he did not have anything in his hands whatsoever.

Q: But you told me that ~~when~~ you had heard two shots before you got to the window and when you got to the window, the boy was already flat on the ground.
A: Yes, he was flat on the ground.

Q: Then, how do you know he went like this?
A: Well, I was standing on the side when first I came to the window, I did not know anything I just heard some shots I couldn't see because everybody was crowded around and they were screaming.

Q: Yes, he was on the ground already.
A: I guess so.

Q: So how do you know the boy tried to fend off the cop?
A: Because someone was screaming, he didn't do anything.

Q: Yes, but you did not see the boy go like this. You did not see the boy standing up?
A: No.

Q: And you had only seen the boy lying on the ground?
A: Yes.

Q: Did you see him falling or just lying on the ground?
A: When I came downstairs, he was lying on the ground.

Q: But when you first got to the window, what did you see?
A: I don't know, I saw somebody get hurt; I knew I had seen something because everybody was crowded around him.

Q: When you got to the window, what did you see? Did you see just the crowd and you could not see the boy lying on the ground?
A: I couldn't see the boy lying on the ground.

Q: When you got to the window. So you didn't see the boy lying on the ground until you got downstairs.
A: Right.

Q: And at that time you saw the police officer. What did you see him doing or saying?
A: He was standing there and after he had shot the boy he put a badge on. He did not have it on before.

Q: In other words, you got downstairs before the police officer put on his badge?

A: Yes. He put on his badge and said, "I am a detective." He put a smile on his face. Everyone started screaming and hollering and everyone got hysterical, then the cops finally came. So his brother was laying on the car, he goes to the school also.

Q: His brother?
A: The boy's brother who died. He was laying on the car across the street from the boy and he was crying.

Q: Wait a minute. You said the police finally came. How long did it take before the police came?
A: It took a little while.

Q: What happened between that time?
A: Well everyone was screaming and hollering,"You killed the boy for nothing, you didn't have to kill him." Because the boy did not seem to be moving at all. He was just laying there.

Q: Then you said the riot started?
A: Yes.

Q: When did the riot start, when the cops got there?
A: No, right after he shot the boy the riot started.

Q: What did they start doing?
A: They started screaming and hollering, everyone got hysterical.

Q: Did they throw things?
A: Yes, they started throwing bottles.

Q: Just at the copy.
A: They didn't throw bottles until the cops had got there. Then everyone was just screaming and hollering, "You killed the boy for nothing, you didn't have to kill him."

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Q: What is your name?
A: Shelton.

Q: What is your last name?
A: Shipp.

Q: Now, do you mind if I call you Shelton?
A: No.

Q: Thank you. Call me George, will you. Did you actually see this happen?
A: Yes, I did.

Q: Now, where were you standing?
A: First, I was in my classroom and we heard some shots. The whole class heard it. I did not think it was anything. Some said it was possibly firecrackers, but I ran to the window and I could not see anything because there was a whole bunch of crowd standing there, so I came downstairs and I walked over to where the shooting had taken place and the boy was laying on the floor and they had turned him over so I could see, you know half-way over.

Q: How do you know they turned him over?
A: Because they were screaming, "You didn't have to kick him over," everybody was screaming something down stairs. So from what I had heard

Q: Did you get a good look at the boyd?
A: Yes I did.

Q: Now, did he have bullet holes in his front?
A: Yes, no, not really in his front, but the side.

Q: Where, can you just show me?
A: Here.

Q: Were they front or back?
A: Around. I know he was bleeding from here.

Q: Did he seem to be bleeding from the front or back?
A: From the back.

Q: When you saw him, was he on his back?
A: He was like sideways. He didn't actually turn over, like on his side, blood was coming out of his mouth. I didn't know whether they had shot him in his mouth or not.

Q: Was he bleeding down his chest, on his chest?Was his chest bleeding; was his front bleeding?
A: No, not that I remember.

Q: His front was not bleeding.
A: No.

Q: I see. Now, by the time you got there, you saw some other kids around there, who were there before you, right?
A: Yes.

Q: Could you tell us whom you saw there?
A: Well, there was a girl named Rosaline. I don't know her last name. She is ~~not~~ in my class,she was a very close friend of his. She told me she tried to snatch him out of the way when he came out of the building. She tried to pull him out of the way. But after they had shot him she was standing there because she had got hysterical.

Q: Did you see anybody else?
A: Another girl named Shirley that I know, she was also right there at the scene.

Q: Did you see anybody else?
A: Another girl named Shirley too.

Q: Wouldyou do something for me? This is very important.
A: Yes.

Q: Would you tell these girls that we want to talk to them?
A: Yes, a lady was going to bring them here today but they could not come because they wanted to ask their parents.

Q: When you call them up -- you can call them from here or you can call them from home, we can do it right now if you want; would you just call them up and tell them that either they can come down here with their parents or if necessary, either I'll go up there or I'll send somebody up there to see them wherever they are. Because certainly we do not mind their parents being here when we talk to them, and we are not going to get anybody in trouble, you know, but we have got to get the facts. We do not want anything like this to happen again, right?

A? I know.

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Q: What is your name?
A: Lorraine Green.

Q: Did you see this happen yourself?
A: I did.

Q: Where were you?
A: I could say at first I was across the street, then I came over to the car. There was a truck there.

Q: Let me ask you something first? Did you know this boy, Powell?
A: Not personally. You see I had just met the boy. I had forgotten his name but just to see that I had just met him about a few minutes ago and to see he was dead, you know, shot.

Q: Was he a nice kid from what everybody said in the school?
A: He was well to get along with. Since I have met him and since I have seen him, I have seen him lots of times before I met him, I have never seen him in a fight. He was always laughing and having a good time.

Q: He was ~~an~~ not a trouble maker?
A: He was not a trouble maker.

Q: The school is on the south side of the street, isn't it? On 76th between 2nd & 3rd. Where ~~yhe~~ were you standing?
A: I was standing in the street.

Q: In the street? Which side of the street, on the school side or the other?
A: Mostly towards the north side of the street. You see, I had walked over there when I heard the super talking to the boys.

Q: I see, in other words, you were waiting for class. Why were you there?
A: In the first place, I had come there a few times late and when you come late to class they count that as an absence, so I was outside waiting for my next class.

Q: What did you hear the superintendent say?
A: Mostly I heard him say, you know, the boy had said something to him, they were cursing, I read in the newspaper what they wrote.

Q: Well I do not care what they wrote. What did you hear?
A: He asked in the first place to get off the stoop and he watered him down with the hose.

Q: Did you see him water him down?
A: Yes, I did. This one boy, he got the hose mainly on this one boy in a blue shirt and black pants, kind of short.

Q: There wasn't any accident. He deliberately watered them down.

A: Yes, deliberately.

Q: You saw them?

A: I saw them.

Q: You say he kept the hose mainly on one boy. Did the boy try to get out of the way?

A: No, he had the hose mainly on him but he would move the hose along as the boys moved.

Q: OK, that is what I wanted to get clear. So, what happened next? In other words, after you saw him watering them down, then what happened?

A: He took up a garbage can top, you see he was standing there.

Q: This boy in the blue shirt and black pants picked up the garbage can top?

A: Yes.

Q: He threw it at him?

A: Yes he did.

Q: Did it hit him?

A: No, the man had moved.

Q: Then what happened?

A: Then he turned to the rest of them and he started watering them. Then I walked across the street and I was standing under a tree.

Q: Did he say anything while he was doing this?

A: I didn't hear too much from this man. I think he said, You better move, or something like that.

Q: You started towalk towards this stoop?

A: No, I walked towards the shop right next to the building and then I came over next to the tree and I was standing next to the tree watching them, and he told me, Move from the tree, because he wanted to water the tree and I said, All right, just don't wet my skirt. He started watering the street, the tree is next to the edge of the street. As I was getting ready to walk off the edge, he started watering the tree, the water got on me but I didn't say anything.

Q: He actually got some water on you too?

A: I think that was meant, but he did not watch until I walked away from the tree. He just started watering as soon as I passed by the tree. Then this girl came on the sidewalk and he wet her legs. She cursed ~~Hi~~ "See what that man did to me, he wet my legs."

Q: How did she curse? What did she say?

A: I can't remember her curse words. I know she cursed him.

Q: What did she say, damn or

A: I think she said,"look at what that ---- man did to me."

Q: I have heard all these words so it's all right.

A: That is what happened. Then I think this man came out of the building.

Q: What were the boys doing all this time?
A: Standing around and cursing. I think one boy threw a bottle, I'm not sure.

Q: The boys were up on the stoop?
A: No, they had moved because they were off the stoop.

Q: They were off the stoop?
A: Yes, they had left the stoop.

Q: What happened then?
A: Then this man came out from the basement apartment and they told us to leave the stoop and the super alone. Then the super went into the building. Then I didn't see the men mo more. Then this man came out of the building and the boy came across the street and the man went back in the building. The boy went to the door and he shook the knob. I guess it was just to see whether it was locked or open.

Q: It was the basement door?
A; No, it was not. It was the stoop next to the aprtment house. This other apartment house.

Q: I am not sure I understand you clearly.
A: There is this apartment house and there is another apartment house and then a store.

Q: The stoop is on one house~~e~~ and there is a door on the apartment house, that is where the super was?
A: No, the super went into the basement.

Q: Why did the boy go try the door on this other house?
A: This other man had come out of the building next to the other building and had said something to the boy, and the boy came across the street with the knife in his hand and the man had went inside. He went to the door and tried the door knob. He backed away from the stoop, closing the knife and then the man came out of the building and shot him.

Q: Let me get this a little clearer. You had been near the tree. Where did you go from the tree?
A: Next to the car.

Q: In the street next to the car.
A: Yes.

Q: Where was the super?
A: The super had went in.

Q: Did the Powell boy follow the super into the building?
A: No, he did not.

Q: He was out there with these other people?
A: He was across the street. This girl had toldhim, "Don't go across there." You know she told me she said that.

Q: But he did go across the street?
A: Yes he did.

Q: Who is that girl who told him?
A: She is a witness, was the main witness. Roslyn.She did not call me.

Q: He went across the street and what was he doing just before he was shot? Was he throwing things, did he say anything?
A: No, he came across the street. He had a knife playing in his hands like this.

Q: He did have a knife in his hand?
A: Yes, he did. But he closed the knife up. He was backing away from the stoop when the man came out and he did like this. He shook his head with a gesture as if he were saying No and the man shot him.

Q: Just tell me that again. He had a knife in his hand but you saw it was closed?
A: He closed it. Yes.

Q: Where was he standing?
A: He was backing away from the stoop. 3 feet away from the stoop.

Q: Now this man came out of the store
A: Out of the building.

Q: You saw him come out of the building, not the store? You saw him come out of the apartment house next to the building with the stoop?
A: Yes.

Q: What did the man say to the boy?
A: I don't know, I didn't hear that but I know that he said something.

Q: You know he said something, but you didn't know what itwas he said.
A: No, I was too long distance away.

Q: The boy was standing there with the knife in his hand playing with it?
A: I don't think the man seen this knife because he had closed it up and had it in his hand.

Q: He closed it up. How big was it? It was not very big, was it?
A: No, it was a small knife, nothing to get excited over.

Q: So this man that came out of the building, he said something and what did you say the boy did?
A: No, this is how it was--the man came out of the building before the boy had walked across the street, he said something, I guess the boy had turned around and walked across the street to the building where the man had went back in. The boy shook the door knob just to see whether the door was open or not, then he backed away from the building, closed his knife in his hand. The man came out of the building, he shook his hand in a gesture saying No and the man shot him.

Q: He shook his hand like this?
A: He did like that.

Q: He was just standing there?
A: Yes.

Q: You did not hear what the man said to the boy?
A: No, I did not.

Q: How far apart were they when the man shot him?
A: A yard.

Q: A yard is about like this. That close?
A: No.

Q: You show me how far apart they were. From where you are sitting, just get up and you show me. Alright now, let's see how far that is. Each of these squares is 9 inches. 1,2,3,4,5,6,7,8,9 -- 81 inches is what you are saying. That's roughly 7 feet. Is that it all right?
A: Yes.

Q: The boy was standing there with his hands sort of what?
A: Sort of a gesture.

Q: When you saw his hands, were they opposite his shoulders raised up, like this, his elbows bent? Were his hands about the level of his shoulders?
A: Just about, a little further down.

Q: I see, just a little below the level, with his elbows bent loose and his hands just about the level of his shoulders. Were his hands open, closed, half-closed?
A: I don't know, Iknow he did like this.

Q: When you say like this, you mean, he shook his hands back and forth a little bit.
A: You know, you tell somebody, No.

Q: All right. So then from 7 feet away the policeman shot him.
A; That's right.

Q: Now you didn't know he was a policeman.
A: No.He said so after he had shot the boy and the boy was lying on the ground.

Q: You couldn't tellhe was a policeman?
A: No I couldn't.

Q: You did not hear him say and you thought ~~you~~ he said something but you couldn't hear this man say anything. How far away were you from the man?
A: When I see this, I ran up on the sidewalk.

Q: At the point when you saw this happening, where were you? How far away from the policeman were you?
A: You said 7 ft. from there to there. I'd say I was just about xxxxxx xxxx .....

Q: Say, three times as far away as they were apart.
A: Maybe three times as far away.

Q: Were you a couple of car lengths away?
A: I was two car lengths away.

Q: Two car lengths away from this policeman and the boy was on the other side of the policeman from you or were you near the boy or near the policeman?

Q: Before we get to the riot, you took her in where?
A: I took her inside.

Q: Inside where:
A: In the building.

Q: Into the Junior High School?
A: Yes.

Q: You took her across the street into the school.
A: Yes.

Q: Did you see the policeman turn the boy over?
A: No.

Q: You did not.
A: No.

Q: By the time you got back, there were all kinds of people milling around?
A: Yes, but you see one boy, the boy who was standing there, the boy that was hosed, that is what he told me.

Q: The thing is this. You could help us a lot if you could do this, if you could get that boy that was hosed.
A: I don't know his name.

Q: Well you'll see him in school. If you could explain to him how important it is that we get all the facts on this thing, I'd love to talk to him because he was right there all the time.
A: He was at the sidewalk with the people.

Q: And he is not going to get into any sort of trouble and he can come down here with his parents if he likes or he can come down by himself. If it is really hard for him to get down here, we will send him over in a cab or if it is really hard for him to come down, we can go up wherever his family is, but we have to get all the facts because what we want to do is make sure that things like this don't happen, and the only way we can do that is to make sure that we get the facts and present them in such a way that something~~s~~ happens to this buy.
A: You see, because this boy I know he seen it all.

Q: Would you make it your business to find him in school and talk to him. Maybe some ~~tim~~ of your friends know his name.
A: Maybe so.

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Q. Would you state your name and address, please?

A. Tessie Ballard. I am living with a friend~~s~~ of mine at 345 West 145th Street.

Q. How do you spell Ballard?

A. B - A - double L - A - R - D.

Q. What is your telephone number?

A. My telephone number is AU 1-7589.

Q. All right, Miss Ballard, can you tell us what happened from the time you went to the rally? About what time did you get there?

A. I went to the rally at approximately a quarter to 7:00.

Q. Where did this take place?

A. It took place on the corner of 125th and Seventh Avenue in front of the Chock Full O' Nuts restaurant.

Q. I see. Approximately how many people were there?

A. At the beginning, not a very large crowd. I would estimate about 150 standing around the speakers, and a number sitting out on the [...].

Q. Then what happened?

A. Well, after the CORE members had spoken--

Q. Which CORE members?

A. There was one girl who identified -- a lady -- who identified herself as a Bronx CORE member, and one from Jamaica, and other CORE members. But I don't think there were any who identified themselves from the Harlem branch.

Q. The girl who spoke, what was she wearing.

A. She was wearing a red-and-white striped blouse and a gray skirt.

Q. And then what happened?

A. Well, after they had spoken, she was also pulled aside and -- I don't know if they was radio or television, or whether they were police: the men with the yellow badges -- they spoke to her several times apart from the meeting. Then someone came along and informed someone that the meeting was officially over.

Q. Who was that?

A. I don't know. [...] white person who came [...] another person that the meeting was officially over. And at this time, there was one man speaking -- I happen not to know these personalities at this time. And then Reverend Dukes spoke to the crowd. [...] seemed quite calm and there was really [...] on the way home, but I decided to stop and have a soda.

Q. I see. Was the meeting in fact breaking up at that time?

A. I know it was breaking up. But apparently they [said?] "Let us go to the 28th Precinct."

Q. Who said that?

A. I think Rev. Dukes said this. And I joined the crowd and we went along to the 28th Precinct. It was not at that time a very large crowd, no more than, perhaps, 50.

Q. And how were they walking?

A. Walking calmly along, encouraging the people along the [path?] to the precinct to come along.

Q. Did they say specifically what they were protesting?

A. They were protesting the killing of Powell. There was nothing that was greatly disorderly about this crowd. They were [...], but by no means could I say that this was a riotous crowd.

Q. I see. And when you got to the police station?

A. When we got to the police station, we were met at the door. Rev. Dukes wanted to go in. We were asked first to clear the passage way to the precinct, and also to give the passageway on the sidewalk. [...] policeman said, "This is an emergency building. I have all things coming here, so you'll have to [...] across the street." All right, at this time the crowd [pressed?] across the street from the precinct. We were singing, praying [...] saying "Murderer. Murder us now." But it was not disorderly, the crowd itself. During this time, the policemen came out and formed a line in front of the building. It was at this time, first the garbage can top came down. A garbage can top came into the street.

Q. This was thrown from where?

A. This was thrown, I would say, it seemed to come from a house that was on the side of Seventh Avenue, from the middle [...] of the police station. And then a salt-and-pepper shaker was thrown. And a piece of fruit that might have been a tomatoe, but it was something that was circular because some of it splashed on my dress.

Q. I see. This was on the side across the street from the police station?

A. [...] across the street from the police station.

Q. Then what happened?

A. At this time, there were two policemen coming up in additional squad cars.

Q. Was the street clear at this time? You were all on the sidewalk across the street from the police station?

A. [...] not entirely on the sidewalk, but down in the street. But no one was in the middle of the street, except the police. A police truck went out to get some horses and cross-ties to put up a police line. Now, the group that was in the center was a little in the street. When they began to put up this-- they just took to pushing people back. This was the first pushing that I saw that was done by the policemen. When they pushed the people, they sat down.

Q. Where did they sit down? Where they were in the street?

A. Well, they sit down on the sidewalk. And at this time the policemen rushed over to take them into the station. Now they took them in in this manner.

Q. Now wait. When the policemen started pushing the people back with the barricades, did they succeed in pushing them off the street entirely?

A. Yes. As they sat down they were on the sidewalk. Then they removed the barricade and the policemen came over to pick up these people. They told them to leave now. They sat for just a moment or two. The police rushed over. Sometimes two and three were carrying one person across. They carried them across most carefully, and then they just all of a sudden let their arms drop and their heads [...] on the sidewalk.

Q. I see. How many people did you see carried in this manner?

A. I couldn't count, but I would say easily about 12 or more.

Q. All carried in this manner?

A. All carried in this manner. Two or three boys who would just take them and rough 'em up a bit and take them into the station.

Q. What had happened prior to the time the police took away the barricades? You say they took away the barricades? What happened prior to that time?

A. Nothing other than the policemen pushing them back and they sat down on the sidewalk.

Q. Well, did you notice what was going on in the police station with the CORE people or Rev. Dukes?

A. Rev. Dukes was over. In fact Rev. Dukes had come over and asked the people to please step back and cooperate and [...] with the police to come up to this precinct that night.

Q. Had you seen Dukes in the police station, or going back and forth?

A. Dukes had gone to the police station, and I think also one of your CORE workers was with Dukes. He was a young man who had on a khaki shirt and some Bermuda shorts. I think he was arrested because I didn't see him later on that night.

Q. Prior to the time that the police came in, was there anything else thrown besides those three items?

A. Those were the only three items that were thrown. And after the barricades were open, at that time at 123rd Street nothing was thrown.

Q. So there was nothing else thrown until after the police made the arrests.

A. After the police made the arrests, there was nothing thrown on 123rd Street.

Q. There was no garbage thrown.

A. No garbage was thrown.

Q. Just prior to the arrests, what went on in the street?

A. Well, really nothing was going on in the street. People were standing about, milling about. After the arrest was made, the police came over and told all people to get off the street. I went and sat on a stoop, and they said get off. Many people said, "We live here." A police captain came by and said, "Move." I said, "I'm enjoying the air. If I move you will have to move me." And he moved on down the street. Later he came back and he said, "Well, lady, we're just trying to get everything calm. I know what's going on and we're just trying to get everything calm." But at this time the police cleared the people off 125th Street down toward Eighth Avenue--

Q. 125th Street?

A. 123rd Street. --down toward the Eighth Avenue side and down toward the Seventh Avenue side. I sat on the steps across from the police station a few minutes, and then later walked down to 123rd and Seventh Avenue.

Q. Prior to the arrests, did you see any of the-- any altercation-- or did you see any involvement between the police themselves and the people who seemed to be organizing this rally? Did you see any talk before the actual arrests were made.

A. There was talk.

Q. Who was speaking to whom?

A. I mean there was jeering. They were singing, uh, what is it, uh, "Trash on the water -- the Murphy trash," I mean there songs that did have in them terms of very vituperous remarks.

Q. What was the specific situation which led up to the arrest.

A. The specific situation that led up to the arrest was when the policemen pushed the CORE members back, pushed them back on the sidewalk and they sat down, and they told them to get up and move. This is when they were arrested.

Q. Did you see a specific person? Can you identify the person who told them to move back?

A. I don't think I could.

Q. How far away from this--

A. At this time I was-- In fact, many times I was on the front line. At this time I had moved back on the sidewalk, because I rather milled around.

Q. Did you notice any people walking or using a megaphone, or a loudspeaker?

A. Yes. Rev. Dukes had it a while. A policeman had it, too, for a while. Then he told them to move, to dress back. Then I remember seeing Rev. Dukes and also--

Q. How long before the arrests was this that the policeman had the megaphone or a loudspeaker?

A. [...] happened so rapidly, I would say a few minutes. Because they did not have the police barricade at that time. It was when they brought these cross-ties and planks, that's when the fracas started. And it started from the cops pushing the people back on the sidewalk. After they'd been pushed back on the sidewalk, they sat down and they were told to move. And this was when the arrests began.

Q. Well after they put up the barricades, what happened to the loudspeaker? Who had it?

A. There was this rather short policeman---I don't know whether I could identify him or not-- who seemed to have been someone in charge. He was the one who said we would have to clear across the street.

Q. I see. Thereafter did Rev. Dukes or any of the rally people have the loudspeaker, or use it?

A. Rev. Dukes came over and said Murphy was supposed to come up and just see what has happened. You see what has happened. And I was wondering what had happened. The only thing I had seen was that some people had been arrested because they did not move.

Q. But you weren't fully aware of who had the megaphone or who was using it at the time of the arrests, or just preceding it.

A. One person had it -- I think it was a CORE member, I'm not sure, but I could identify him if I would see him. Then Dukes took it over to try exhort the people to move back, that Murphy was going to come up and was going to meet with them at the precinct that night.

Q. ~~[Mumbled]~~ Barricade up yet?

A. No. This was just before-- ~~while~~ the barricade was being put up.

Q. I see. But after the barricade was put up?

A. After the barricade was put up, then the policemen started running the people off the street.

Q. You didn't notice what had happened with the megaphone during this?

A. No, I did not.

INTERVIEWS RE. GILLIGAN

Clifton Harris - July 21 - 2:10

Present: Clifton Harris, Mrs. Harris, Schiffer

Q. How long had you know the Powell boy?

A. About ten or eleven years.

Q. When did you first meet him?

A.

Q. Were you both living in the same neighborhood? That's how you met him?

A. Yes.

Q. Have you always lived in the same neighborhood since then.

A. Yes.

Q. Were you close friends?

A. I don't have close friends ...

Q. I didn't hear what you said.

A.

Q. Did the Powell boy get into a number of fights?

A. Sometimes someone would tease him ...

Q. How big was the Powell boy?

A. About Carl Dudley's size.

Q. How big is that? Was he bigger than you, or smaller than you?

A.

Q. Why did he get into fights?

A.

Q. I don't understand.

A. Cause when his father died they used to pick on him ...

Q. Were there other fights that you can remember?

A. Yes.

Q. Like what?

A.

Q. What was he fighting about?

A.

Q. Why was he fighting about his mother/

A. Cause his father died and they used to tease him about the way he treated his mother.

Q. He didn't treat his mother well?

A.

Q. Well, what were they teasing him about?

A.

Q. You mean they teased him because he was nice to her, or teased him because he was nasty to her?

A. Yes. When he speak to her he used to be nasty to her.

Q. What kind of a job did he have?

A. I don't know. I think it was some kind of a packing job.

Q. Did he work regularly?

A. Yes, every day except for Sundays.

Q. After school?

A. He didn't go to school. He ~~did~~ in the summertime; he never felt he could go to school in the wintertime either.

Q. But he was going to this school.

A.

Q. He went to school in the wintertime?

A. When he wanted to.

Q. Well I mean in the wintertime didn't he go to school regularly?

A.

Q. You were saying that sometimes he talked ~~nasty~~ nasty to his mother?

A. Yes.

Q. And he didn't go to school regularly?

A. No, he didn't go to school regularly.

Q. What school was he going to, if he went at all?

A. Samuel Gompers.

Q. Samuel Gompers. Now, what is this thing about a knife? Somebody said -- I think you said that a newspaper or something -- that you had a knife of his.

A. Yes.

Q. What's the story?

A. Oh well, me and Powell -- Powell bought two knives that day.

Q. He bought two knives?

A. Yes.

Q. Where did he buy them?

A. I don't know where he bought them, but I was waiting at the train station.

Q. You were waiting at the what?

A. The train station.

Q. Which train station.

A. The 125th Street.

Q. And What?

A. And I think Lennox.

Q. Could you just talk a little louder?

A. I think Lennox or Lexington -- one of those names.

Q. Uh huh. And he went out and he bought two knives?

A. Yes.

Q. Why did he buy two knives?

A. Cause he used to say, like uh, like when we used to go downtown, like sometime when I used, like people used to get in ~~gx~~ fights, and people used to say, "All knives aside." Used to put his knife aside and have one just in case the other person don't have his aside.

Q. I see. What kind of knives did he buy?

A. Same regular knives that you flip open.

Q. Sort of a clasp knife, in other words.

A. Yes.

Q. Did he ever get into a fight with a knife that you know of?

A. Not that I know of.

Q. Did he ever get into a fight with a bottle?

A. A bottle? Nope.

Q. How about a bicycle chain?

A. Nope.

Q. Did he ever have a zip gun, or anything like that?

A. Nope.

Q. As far as you know had he ever been with a social worker or anyone like that?

A. Social worker?

Q. Well, you know.

A. Uh uh.

Q. Had he ever gone to a psychiatrist or anything like that?

A. Nope. He was pretty smart.

Q. Why did he decide to go to school in the summer?

A. He just wanted to pick up on his work ... cause his teacher promoted him to the eleventh grade, even though he didn't go to school much. So he wanted to start to learn again. So he said I'll go to summer school and take up good subjects. Cause he wanted a good job, cause he didn't like the job he had at first, so he said he wanted a good job, so he said I'll go to summer school this summer and get a little bit smarter.

Q. Now, on the day in question, when he got killed, did he carry a knife?

A. Yes, he carried his two of them with him.

Q. He carried both knives with him?

A. No, he didn't carry 'em, he had it. But then when he went into his pocket to get a cigarette, he told Carl Dudley to hold one and me to hold one.

Q. Why was that?

A. He was looking for a cigarette, and he couldn't go into his pocket if he had two knives in his hand. So he passed them on to us and we hold them.

Q. All right, now, could you just explain that a little bit clearer to me, because I don't quite follow it. Did he go to school with you; did you go down to school with him.

A. Yeh, I called for him, and me and Carl went to school with him.

Q. The three of you went down to school together?

A. Yes sir. And after we got on the bus he wanted to smoke a cigarette. So he went in his pocket and he couldn't find it. And when he went in his pocket he took out two knives -- a black one and a red one. He gave me the black one. He said, "Hold this." He gave me the black one and Carl Dudley the red one. So we put 'em in our pockets and he forgot to ask for 'em back. And we went on to school.

Q. I see. So you went on to school, and then what?

A. ... we messed around and went to a store and he bought a hero and sorta ate. Then all of a sudden there was something like a riot went on. ~~Wh~~ Some kids ran down the block, dumped over the garbage cans. Then the super got mad and he, like, picked up the garbage cans and he was washing off the dirt. Then he sprayed water in this kid's face. And the kid got mad and--

Q. Did you see all this, or did you hear about it?

A. Yes, I seen it. He went up there and the kid pushed him into the door. And the super said, "I'll wash some of the black off you," and he squirt the water in the kid's face. The kid jumped down the stairs and picked up the top of a garbage can and he hit the man. And then after that everything quieted down and I went back across the street. And then Powell asked me -- First Powell asked Carl, "Can I have my knife?" And Carl was looking for it, and Carl couldn't find it. So while he was talking to Carl I walked by like this, and he grabbed me and he said -- like I'm walking by and I met him, and he said, "Could I have my knife. Could I have the knife?" I said, "Here. Where you going?" He just say "Gimme the knife." I say, "O.K." So I gave him the knife. Then I say, "Powell, Powell, man, tell me where you going." He say, "Don't worry, I'll be right back." Then he went across the street. The man and Powell started boxing. I took a quick glance at them, and I just seen them go behind the car. And all I heard was three shots. Then while I went across there, the cop was standing on top of the stoop looking down at Powell. I said, "How come you shoot him?" cause he didn't show no badge or nothing. I said, "How come you shoot him. How come you shot him like that?" And he took out this little blue thing, slipped it out of his pocket like that and showed it to me. And I said, "Why don't you call the ambulance? The TV shop is right over there." And he just looked at me and said, "Here's my pistol. You go call the ambulance." So I run into the store and I call the ambulance and everything. Then I came back and I got on my knees and I started to talk to him. He wouldn't answer; he was throwing up blood. Then I, like took a quick glance, I saw the knife on the floor and the way -- when I took a look, it looked like it was closed to me.

Q. Where did you see it?

A. Like near the gutter. Like the street, like just another black rock that's there, then they got like cement and all that -- right on the side, right near there, like that.

Q. You mean near where the curbstone is?

A. Yeh. And like when I looked over there -- I think it was a cop or something -- he picked it up and he put it in his pocket. And that was it.

Q. A cop picked it up?

A. Yeh, I think it was a cop.

Q. And it was closed? He just put it in his pocket closed?

A. Yes sir. Cause I don't look up at him. I just look at his feet, cause I'm getting ready ~~for him~~ to grab ~~me~~ it; and like he just looked like this, and he just picked it up before I could near it and put it in his pocket. And that was it.

Q. I see. Now, let me ask you this. You were talking before about what happened a little earlier. You said that there were some kids that came running down and knocking over garbage cans?

A. Yeh. Like they was stealing something from some store and they was running and they knocked over the garbage cans and stuff, and the super got mad.

Q. Were they sitting on the stoop or something?

A. Who was sitting on the stoop?

Q. Were these kids sitting on the stoop. No, they were just ruhning down--

A. Like they were coming from -- like the corner was over here -- like they stole something from the store and they shot around the corner like that and they was knocking over garbage cans trying to get away.

Q. How do you know that they were stealing something?

A. Cause they had all kinds of goods.

Q. Like what?

A. Like potato chips and stuff like that.

Q. In other words, they came around the corner of Third Avenue?

A. Yeh.

Q. And they had all kinds of junk--

A. Yeh. Cake and potato chips and stuff like that.

Q. I see. Okay.

This is July 30th. We are in George Schiffer's office. I am alone with Clifton Harris. We are continuing an interview in connection with the Powell shooting.

Q. Now Cliff, I want to start out by asking you some things about James Powell. You told George Schiffer before, I believe, that you have known him for quite some time.

A. Yes.

Q. You know, speak as loud as you can so that your voice we are primarily interested in. How long did you know him?

A. About four, eleven, or ten years.

Q. About ten or eleven years. I think you live on the same street or same block?

A. The same neighborhood.

Q. What is your address in The Bronx?

A. 1680 Randall Avenue.

Q. Right. Now, just generally, what sort of fellow would you say James Powell was?

A. He was a nice kind of fellow, like if he had something and you asked for it he would give it to you.

Q. Did he get along well with people? Young people?

A. I don't know. I know he got along well with me.

Q. He got along well with you. Did he get along well with older people?

A. A lot of older people liked him. Some didn't.

Q. Did he have trouble with any of the kids, say, teasing him and that sort of thing?

A. Yes.

Q. For what reason, do you know? Do you have any idea?

A. Like for no reason. They run around and joke around with each other, and they used to talk about each other's mother and stuff like that.

Q. Playing the devil(?)?

A. Yes.

Q. Did anybody ever tease him about his father?

A. No.

Q. I believe you told George before that James Powell had trouble because the boys teased him about his father being dead?

A. No. Because his mother was in the hospital, his God-father came over and asked him why don't you go over and see your mother and Jimmy said it was too late. He said yeah. But then this guy, this big guy said to apologize(?) why don't you go see your mother and he didn't know nothing about it, the big guy. He kept on telling him to go see his mother and he got mad because it was none of his business, and they just started fighting.

Q. But, did he get along, seem to get along with his mother as far as you know?

A. Yes. Sometimes they used to argue, because he was the only kid, they used to argue when his mother didn't want him to go out; to stay out late; to stop him from going downtown and all this. Like this they used to argue.

Q. Did he stay out late often?

A. No, he used to work. I never used to see him hardly in the summertime. But then his boss laid him off.

Q. Now, this was a night job he had?

A. No, it was in the day, in the morning.

Q. In the morning. Before school?

A. In the summertime.

Q. Oh, in the summer, I see. Did he go to school regularly, Powell?

A. In the summer?

Q. During the regular semester? In the winter?

A. No, he didn't go regularly.

Q. What high school do you go to?

A. I don't go to high school.

Q. What school?

A. James M. Canon Junior High School, 123.

Q. Did Powell go to the same school?

A. No, he used to go to Gompers.

Q. Now, why was that, you both live in the same neighborhood?

A. He used to go to high school and I used to go to junior high.

Q. Oh I see, he was in high school. Did he stay out of school much, as far as you know?

A. I don't know because I used to go to school, but I used to see him a lot.

Q. This was in the winter?

A. Yes.

Q. Did he go to summer school before this summer?

A. No.

Q. He did not, I see. So then he are saying that as far as you know he went to school fairly regularly?

A. Yes.

Q. And he worked?

A. Yes.

Q. He had a job in the morning?

A. Yes.

Q. Now, was he a member of any gangs, social clubs?

A. I don't know. He used to talk about the gang but I forgot the name.

Q. Did he indicate that he was a member?

A. I never heard him say he was a member. I think he was a member because of the way he used to talk about it. He always used to go down there and see his friends. I think he was a member.

Q. Did he get into many fights?

A. No. He would like let somebody bother him but he wasn't the type to look for them.

Q. He wasn't the type to look for them. Now, you both were going to Wagner Junior High School this summer?

A. Yes.

Q. Did you see him often during the summer?

A. After, I mean before going to school?

Q. While you were going over here?

A. I seen him every morning. We used to go at the same time.

Q. You used to go the same time. Did you go to school together the day he was shot?

A. Yes.

Q. You did. Now, there has been some question as to whether or not Powell had a knife at that time. Did you know him to carry a knife?

A. Yes.

Q. You did. Did he have a knife that day?

A. Yes.

Q. Describe it. Was it a big knife, switch blade?

A. It wasn't too big. About this big, with the blade out.

Q. With the blade out, you are indicating about six inches? What color was it?

A. He had two. He had a black one and a red one.

Q. A black and a red, and they were both the same size?

A. Yes, both were the same size and everything.

Q. Did you see him get these knives? In other words, did he buy them? Did he find them? How did he get them?

A. I think he bought them.

Q. You think he bought them. Do you have any idea about when he bought them?

A. I was with him but I waited down at the train station. He bought them from some kind of store on 125th Street.

Q. Now, was this on the West Side or the East Side? Or did you say on 125th Street?

A. I don't know. I think it was on Lexington, some place, I don't know.

Q. Well, let's see if we can figure it out. Now, you live in The Bronx. How do you go home?

A. I take the Local. The Westchester.

Q. Is that on Lexington Avenue? In other words, when you get out of Wagner High School, which way do you go to the subway?

A. I go up towards Third Avenue.

Q. Third Avenue. Third Avenue and what street?

A. I don't know.

Q. But it's near Third Avenue?

A. Yes.

Q. So that would probably be.... Is that the train you take all the way to The Bronx?

A. Yes, it takes me all the way home.

Q. In other words, it was on this subway line that you waited for him at one of the stations, and he got off at 125th Street?

A. Yes.

Q. In other words, were you coming from home at this time, or from The Bronx?

A. We were coming from school at that time.

Q. This was in the afternoon?

A. Yes.

Q. You took the train up to 125th Street?

A. Yes.

Q. And what? Did he just get off?

A. No, he said I'm going to get some knives.

Q. Some knives, I see.

A. And I said, yeah. Then he said Carl is supposed to be here. Carl Dudley is supposed to be here, waiting at the subway for me. Oh no, not Carl Dudley, Leon, yeah, I think Leon and Carl. One of those guys is supposed to be waiting there. They told us to wait at 125th Street, for me to wait at the train station because Carl is supposed to be there. So I waited there. And then he came back with the knives.

Q. Did he give you any reason why he wanted to buy two knives, or why he wanted to buy a knife at all?

A. He used to say this all the time: just in case, if, you know, somebody bothers him or he has a fight and some big guy says all knives aside, he would put his knife aside but would have one just in case the other guy would have one.

Q. In other words then, he seemed to expect to get into fights, or something? Is that what you are saying? In other words, I've heard the story about why he bought two knives, ~~if~~ this all knives aside, but I'm wondering if he gave you any indication why he wanted one knife? Even the first one?

A. He didn't say why. I don't know why.

Q. About how big was....?

A. I think because of the gang.

Q. The gang?

A. (?)You would need the knives because of something like that.

Q. About how big was he?

Q. How big was Powell?

A. About a little bit bigger than I was.

Q. What are you, about 5' 9"?

A. Yeah, I'm about that much.

Q. Did he weigh very much?

A. No, he was kind of skinny.

Q. Skinny, I see. So, you stopped at 125th Street and he went and bought the knives. Do you have any idea of about when this was?

A. I don't know. I know it was kind of long. The knives were kind of old. About a month, a month and a half old.

Q. When did you start to go to Wagner High School? To classes?

A. I think it was July 6th.

Q. In July?

A. Yes.

Q. Did he buy the knives before or after?

A. After, a few days after. After he joined ... went into to go to school. Two days after.

Q. So then this was after July 6th?

A. Yes.

Q. And he was killed on July 16th?

A. Yes.

Q. So actually he hadn't had the knives any longer than about two weekks?

A. Yes. Maybe longer. No, about two weeks, two and a half weeks.

Q. I see. So, then when he bought the knives did they look new? At the time?

A. Yes, they were new.

Q. They were new?

A. Yes. You could tell they were all sharp. No kind of marks on them,or nothing.

Q. So, he had the knives for about two weeks and you say they were looking old?

A. New.

but you thought
Q. I mean, you said before that/they had been about a month or so old.

A. Yeah, because the way he used to handle them. They used to throw them in the dirt, in the grass, and the blade was scratched. They looked kind of old.

Q. Did he like to play with them? Did he play with them?

A. No, I was the type that liked to play with them.

Q. Now, I believe you told Mr. Schiffer before that the day that he was shot he took his knives to school, or he had them on him on his way to school?

A. He didn't have them. We had them. Me and Carl.

Q. What was he wearing that day? Do you remember?

A. A big poncho. I think they were gray pants, like charcoal gray pants. He had on those, I think they were brown shoes, brown cane.

Q. Were they tight pants?

A. They were kind of tight. They were ... they were kind of tight.

Q. And, where did he normally carry his cigarettes?

A. Cigarettes? In his pocket.

Q. You would think normally you would carry them in your shirt?

A. Yeah, sometime he would carry them in his shirt. But most of the time I would see him put them in his pocket. They used to go in his pocket.

Q. So how did he happen to give knives to you people?

A. To me?

Q. Yes.

A. Because he was going in his pocket to give himself some cigarettes and as he took them out I said can I hold one and Carl said can I hold one and he said yeah, so he passed one on to Carl, the red one, and gave me the black one, the messed up one.

Q. You had the black one and Carl had the red one. Now Carl, that's Carl Dudley, now he lives in Brooklyn. How did it happen that he was with you?

A. Because he was staying with his ~~father~~ aunt. But He used to stay at my house more than with his ~~father~~ aunt. But his mother said you can stay down there, but he was really supposed to be with his ~~father~~ aunt.

Q. In other words, although his home is in Brooklyn he was living up in The Bronx, with either his aunt or you?

A. Yes.

Q. Is he still living up there now?

A. Yes, he's with his aunt now, because my father got mad.

Q. Got mad?

A. Yeah.

Q. Got mad at Dudley?

A. No, at me.

Q. At you. I see. Alright, so then the three of you were going to school and Powell gave you each a knife, you got the black one and Dudley got the red one?

A. Yes.

Q. And, you say he took out a cigarette, was it, or something?

A. Yes, a cigarette. It was a cigarette.

Q. You noticed he smoked on the train?

A. No, it was on the bus at the time.

Q. On the bus. Now how, wait a minute, let's start again. In other words when you go, when you leave your house to go to school, do you...

A. I take the bus and the train.

Q. I see. You take a bus first?

A. Yes.

Q. Right, so then on the bus he took his cigarettes out?

A. Yeah, no he...yeah he took his cigarettes out then while he was trying to get ~~at~~ by the cigarettes the knife was in the way, his knives, so he took them out, and he said...and while he was taking them out I said let me hold one, he said yeah.

Q. Okay, so then now he didn't ask for them back?

A. I think he forgot.

Q. You think he forgot. Well, were you ...

A. Once he asked for them back when he was going across the street.

Q. And what happened when he asked for them back?

A. First he asked Carl, Carl Dudley. And Carl Dudley wouldnt give it to him because he told Carl that Carl, Carl told me that he told him that he was going over to get the knife, but he didn't tell...

Q. Now wait. In other words before that. In other words after he gave you the knives on the bus, he didn't ask for them back anymore?

A. No.

Q. He just, you just think he forgot maybe?

A. Probably so. I think so, unless he didn't want them.

Q. Unless he didn't want them. That's kind of strange, isn't it? A fellow goes out and buys ~~a~~ two knives and then,,,

A. He was the type that if you asked him for something and he got it he would let you hold it but he don't....I mean he'd (?) let you keep it but you'll hold it.

Q. Turn the chair around so we can get all of this. Okay, let's go to the day of the shooting and maybe I can think of some more questions about the (?) personality as I get into it. About what time did you get to school that day?

A. about nine.

Q. About nine o'clock. What time was your first class? Your first class?

A. Eight-thirty.

Q. Eight-thirty. So you were a little late.

A. So we didn't go.

Q. What time was Powell's first class?

A. Second period, about ten.

Q. About ten. So what did you do?

A. So, Powell, we stood around the school and the man wouldn't let us. So Powell he went out and bought himself a sandwich and some soda and stuff and he offerred us and started talking and messing around.

Q. I believe that one of the girls said that at the time of the incident with the hose, the water hose, Powell was on the other side of the street. Do you remember where you were when the first business started with the hose?

A. We were across the street but when the man was spraying then we came across the street while he was spraying.

Q. Do you remember now who was...what people were in that group ~~when~~ with you ~~were~~ across~~ing~~ the street?

A. All I know is a few people like Cookie and Shirley, that's all I know. A couple of other girls. Most kids were in class at the time.

Q. Now let me say that most of the kids you know and who you may not want to get into trouble we've probably already talked to anyway. Shirley Robinson, Rosalie Johnson, Lillian Brown or Banks, or whatever it is, Lillian something or other. Now how many of you were there across the street?

A. Counting all the boys I was with?

Q. Yes, now you said you were sitting across the street, sort of talking when the man, when the spraying started. About how many of you were there?

A: I guess I was near the boy--I don't know. The boy was on the sidewalk and the policeman was on the step.

Q: I see, the policeman was on the step and the boy was on the sidewalk and you were off near the car.
A: Yes.

Q: The boy was facing the policeman or the policeman was facing sort of toward you, not directly toward you, but in your general direction?
A: Yes.

Q: So you saw him pull out his pistol?
A: Yes.

Q: Where did you see him pull it out?
A: No, I didn't see him pull it out, I seen it in his hand.

Q: You did not notice him pulling it out.
A: I did not see him pull it out.

Q: Did you see the pistol in his hand?
A: Yes I did.

Q: Did you see it in his hand when he first came up?
A: No, he had his hands at his sides. It was in his left hand.

Q: His left hand?
A: Just a minute. In his left hand.

Q: The pistol was in his left hand. You just saw him raise his hand with the pistol in it.
A: It was so fast. When I seen the boy go down I seen him go down -- then he hit him again when he was going down and then he was down and then he had it in his hand just looking at him, saying "I am a detective" and put on his badge.

Q: Let's get this clear. We want to be sure we get this right. He was up on the stoop. Was he on the top step or on the bottom step?
A: He wasn't exactly on the top step. He had his feet planted one in front of the other.

Q: In other words, one on one step and one on the other step.
A: Yes.

Q: You saw him bring up his hand with the gun in it and he shot the boy once.
A: I can't say his exact hand movements.

Q: Ok. That's all right. The point is it all happened so fast but when you saw him he had the gun in his hand?
A: Yes.

Q: He fired the first time. Now, the boy started to go down.
A: Yes he did.

Q: How did he start to go down? Forward or backward?
A: Forward I guess you'd say because he fell on his stomach.

Q: In other words, he was standing with his arms up shaking his hands No, and when the policeman shot him the first time, he started to go down forward.
A: Like this, he fell like this.

Q: He fell forward and to the side. Which side? Forward to the right side like this or to the left side? Do you remember?
A: I guess it was to the right.

Q: Towards the store?
A; Towards the building.

Q: The super's building.
A: Yes.

Q: He fell forward toward the right. While he was falling the policeman shot him a second time. He was already falling at that point, right?
A: Yes.

Q: On that third shot..
A: He hit him while he was down.

Q: You're sure the third shot hit him when he was already down?
A: Yes.

Q: You saw that?
A: Yes.

Q: You are quite sure the third shot hit him when he was already down?
A: Yes, I am.

Q: Did the boy say anything when he was going down?
A: No, just his face was full of pain. You could tell because his eyes were squenched as if, you know.

Q: In other words, from the angle that you were at you could see the face of the boy as well as the policeman's face.
A: As I said, when that happened, I ran up on to the sidewalk and I was screaming, "Somebody help him."

Q: When you saw the boy's face full of pain, was that after he was down?
A: Yes.

Q: When the boy was down, what did the policeman do next? You say he pulled out a badge and pinned it on himself.
A: Yes.

Q: And said, "I am a detective."
A: Yes.

Q: Then what did you do?
A: Then this girl fell on me and I took her up

Q: Was that Roslyn?
A: Yes, Roslyn and I took her inside, and when I came back out they was saying there was a riot.

July 18, 1964, about 1:15. Present are MRS. ROSALIE JOHNSON, and George Schiffer, in latter's office.

Q. I really very much appreciate your coming down here, it's really very kind of you. I know you've gone through this, Rosalie, several times now, so we'll try to make it brief. I talked to the boy's mother the other day -- the family asked me to come up there -- and I tell you it was something awful. Did you see this? Would you talk just a little louder? Let me move the microphone over toward you. You saw this happen?

A. Yes.

Q. Now, about what time did this happen?

A. It was between 9 o'clock and 9:30.

Q. Between nine and nine-thirty?

A. Yes.

Q. How do you know it was between nine and nine-thirty?

A. Because the second period didn't start yet.

Q. When does the second period start?

A. 10 o'clock.

Q. Why do think it was not between 9:30 and 10?00? Why do you say 9:00 to 9:30? Did you look at a watch or something?

A. After everything happened, I was in the office about a quarter to ten.

Q. I see. You were back in the office at a quarter to ten. Okay. That's all I wanted to know. Now, did you know the Powell boy?

A. I didn't know him that well, but I knew him.

Q. Would you just talk a little louder. The girls are going to have to transcribe this. When had you met him? Recently?

A. Yes.

Q. You met him in that school.

A. Yes.

Q. Did you know much of anything about him?

A. Not too much.

Q. Not too much? Was he considered to be a nice boy? What kind of boy was he?

A. He was a nice boy to me.

Q. Was he a trouble-maker?

A. No.

Q. Was he known for fighting, or anything like that?

A. No.

Q. No, not that you know of. Well, all boys fight to some extent; they do a little fighting themselves.

A. They didn't do no fighting....

Q. Now in the school, at any rate. I see. Was he generally well liked?

A. Yes.

Q. When did that summer session start?

A. August 6 -- No. July 6.

Q. July 6, I see. So the session has been in business for about ten days?

A. Yes.

Q. You two didn't go to the same school in the wintertime?

A. No.

Q. Where do you go to school?

A. In the wintertime?

Q. Yes.

A. No. 139, Bergen.

Q. What is the name of the school?

A. Alexander Bergen.

Q. Alexander Berger? Where is that: in Manhattan or the Bronx?

A. No, in the Bronx.

Q. What year are you in.

A. I'm going to the tenth.

Q. I see. What are you taking this summer?

A. Spanish, Algebra and Reading.

Q. That's quite an ambitious program. You must enjoy school?

A. I do.

Q. Good. Godd for you. Now, where were you just before all this happened?

A. I was outside.

Q. Outside where?

A. Away from the school, on the other side of the street.

Q. That would be 76th Street. Now let's see, 76th Street is one-way running West-to-East, right? And the school is on the south side of the street.

A. I was on the north side.

Q. Let me just take a piece of paper and draw a little picture which might help us. Okay, now let's see. This will be Third Avenue, and this will be Second Avenue, and this will be 76th Street. Now, that would make this north, that south, and this west and that east. All right. Now, where would the school be? About the middle of the block? Or toward one side?

A. Toward the middle of the block.

Q. It's on the south side of the street, right? Over here.

A. Yes.

Q. Here's the school building. Now, where were you? Across the street?

A. Yes.

Q. You were on the sidewalk?

A. Yes.

Q. All right. So let's draw in a sidewalk. Okay. Now, was there a house opposite -- roughly opposite -- where you were standing on the sidewalk?

A. Yes.

Q. What was in the house? What kind of a house was it? I mean what distinguishes it? For example, does it have a store-front or a stoop, or i~~t~~s it an apartment house, or what was it?

A. It was an apartment house.

Q. An apartment house. Does it have a stoop?

A. Yes.

Q. Was it a brownstone? How many storeys has it. Four storeys? Five storeys? Roughly.

A. Three or four. I don't know.

Q. Would you call it a brownstone or an apartment house? Was it a brownstone, or a brick building, or what kind of a building is it?

A. It was a brick building.

Q. Brick? I see. Now where would that be in relation to the school? Right opposite the school?

A. Over here, about over here.

Q. In other words, just to the west of the school. All right. Would you say that's a narrow house, or a wide house, or what kind of a house? A big house or a small house?

A. You mean in length?

Q. I mean like how many windows are across the front? Three or four windows across the front, or a lot of windows?

A. Four.

Q. Four windows across the front. Okay. Now I have a stoop. Do you remember how many steps that stoop has?

A. Three steps.

Q. Three steps. Right. There's a platform on top with three steps below that.

[The tape goes bad here. Can only hear interviewer, who is asking questions about the house -- what is next door, whether there are any trees, etc. Cannot hear any of Miss Johnson's replies.]

Q. Were there some cars parked here?

A. Yes.

Q. How many? Was there an open space, or were they just regularly parked along the whole length of it?

[Remainder of Tape I undecipherable.]

Tape II - Interview with ROSALIE JOHNSON, July 18. Present: Rosalie Johnson, Mrs. Johnson, George Schiffer in latter's office.

Q. Now, Rosalie, when we interrupted you had told me that there were three garbage cans on the TV side, and that the boy had tossed one garbage can cover back at Lynch, the super, and that you didn't know who that boy was. You had never seen him before, but he went to the school. Well what happened after that, after he threw that garbage can.

A. Then he started going wild with the hose.

Q. In other words, when the garbage can cover was thrown, you mean the super started going wild with the hose. What do you mean by that?

A. I mean everybody that was there he wet up. He didn't care who he wet up.

Q. He just started spraying everybody. Did he get you?

A. Yes, he did.

Q. Was he spraying at your faces or you legs?

A. He didn't care which way he was spraying.

Q. He was just pointing the hose at the people? Did he walk towards you with it?

A. No he just stayed and started spraying and when the kids started throwing--

Q. Where was he when he was doing this? Was he on the stoop or was he next to the stoop?

A. He was almost in front of the TV shop.

Q. In other words, he wasn't even in front of his own building?

A. No, he wasn't.

Q. Was that a fairly long hose he has?

A. Yes.

Q. Now when did he start walking over toward the TV shop? XXX He told you people to move, right, when he was spraying his own sidewalk and his own stoop?

A. Yes.

Q. So he wasn't in front of the TV shop then, right?

A. He wasn't spraying his own stoop.

Q. Well then, I didn't understand you.

A. He wasn't spraying his stoop. He was spraying this stoop over here.

Q. I see. In other words, when it started out he was not spraying that stoop, he was spraying the stoop of the building next to the TV shop going towards Third Avenue. He started out in that position, and then he came back towards you this way. Is that it?

A. He was over here first. He went that way. And when the kids started fighting back, he came this way near the stoop.

Q. I see. You started out on his stoop. The police told you to move--

A. No. We was on this stoop.

Q. Oh, I see. You were originally on this stoop here?

A. Yes.

Q. How many steps did that stoop have?

A. Around six or seven.

Q. And the police told you to get off that stoop?

A. Yes.

Q. That stoop being the building next tb the TV shoop toward Third Avenue. You got off that stoop and went on toward the cars going back toward Second -- in other words, back in front of the TV shop.

A. No. We was over here, on these cars here.

Q. Yeah. In other words, the cars near that stoop and toward the TV shop. When he started spraying that stoop, he asked you to move and you then moved back toward Second and toward the garbage cans. Is that right?

A. Yes.

Q. Now I've got it. XXX So then, he started off near that stoop and then he sort of folldwed you in the course of all this with his hose?

A. Yes.

Q. So that by the time he started spraying everybody down, he was in front of the TV shop?

A. Yes.

Q. Now at that point -- when he started spraying everybody -- what did you kids do?

A. Well, I went. I was in back of the cars; I was going across the street.

Q. What did the other kids do?

A. They fought back. They threw garbage can tops and bottles.

Q. Both the boys and the girls?

A. Yes.

Q. Where did they get the bottles?

A. The bottles? They got them out of garbage cans.

Q. In other words, first they'd throw the garbage can covers, then they'd pick up whatever was in the cans to throw at him? Right?

A. Right?

Q. What did he do? Keep spraying them?

A. Yes.

Q. Well, did he say anything else?

A. No, he just said, "I'm gonna wipe the black off you black niggers."

Q. Did he say that once, or many times? I mean, while the kids were throwing things at him, and he was spraying them, did he say anything else?

A. That's all he said.

Q. Well, did the kids say anything back at him? Or did they just throw things at him?

A. They was just throwing things at him.

Q. I see. Wasn't there some shouting or something? Were they shouting or yelling?

A. They were yelling, and more kids came when they were yelling.

Q. Could you hear what they were yelling? Can you remember what they were yelling?

A. No. Somebody said, "Let's git him."

Q. All right. Whatever it is. Okay. So, now by that time, you were across the street, or were you in the middle of the street?

A. I was in the middle of the street.

Q. You were by the cars -- on the street side of the cars?

A. Yes.

Q. Sort of out of range of the hose?

A. Yes.

Q. And did both the boys and the girls start throwing things, or just the boys?

A. Boys and girls threw things.

Q. Everybody. Right. Okay. Well, then what happened?

A. Then the man-- It was, uh-- You know like you going down into a basement--

Q. Yeah, a couple of steps down, you mean?

A. Yeah, and there were plants there, where you could walk down and sit down, sort of like a porch -- there was two men there. And one of the men came and he had on a white shirt.

Q. Wait a second. You're pointing to a place that's between the stoop and the TV shop. And there's some steps down there and a place you can sit.

A. Yes.

Q. Okay. And two men came up, and you say one of them had a white shirt on.

A. Yes. And the one that had a white shirt on, he took the hose away from the man.

Q. Who was that? Do you know who that was?

A. No.

Q. Was he from that shop, do you think, or was he from the building -- or you don't know who he was?

A. No. He was from the porch.

Q. He'd been sitting there?

A. He'd been sitting there.

Q. I see. Then he took the hose away from the guy. What'd he do with it?

A. He turned it off. I don't know what he did with it.

Q. Well, he took it ~~wa~~ away from the guy and turned the hose off. He was trying to stop it?

A. Right.

Q. What did the other guy do?

A. He went inside the building.

Q. Not into the TV shop? The second man went into the building--

A. No, not the second man, the first man--

Q. The man with the white shirt did what?

A. He took the hose away from the man--

Q. Yes?

A. --and then the one that took the hose away from the man, he went back on the porch, and the one that was spraying went into this building.

Q. Lynch? Went into the building with the stoop? W e'll call that Building #1; we'll call the one near Third Avenue, with the stoop, Building #2. So Lynch went into Building #1. Now you said there were two men that came up from the steps near the porch, near the TV shop: the man with the white shirt took the hose away and went back. What did the other guy do?

A. He went inside.

Q. Inside Building #2?

A. Right.

Q. Not inside the TV shop, but inside Building #2. Okay. What did the kids do at that point?

A. They went back on the xcyh school side.

Q. All of them?

A. Yes.

Q. In other words, they just crossed the street and went back on the school sidewalk, or the school side of the street?

A. Yes.

Q. And then what happened?

A. Then this boy named Powell, he went back over there.

Q. I see. Where did he go?

A. He went in this building to talk to that man--

Q. Building #1?

A. Yes.

Q. Now when you say he went into the building, he went up--

A. No, he didn't go into it, he was about to go into it.

Q. Now, did he put his hand on the doorknob or something?

A. Yes. He was going to push the door in.

Q. How do you know he was going to push the door in?

A. Because the man called him. The door was, uh-- He had his had on the door, ready to open it. And it opened a little bit. And then that man with the white shirt called him. And when he turned around the man shot him.

Q. Okay. Now, let's get this very clear. All the kids had pretty much gone back across the street. Then the Powell boy suddenly showed up. Where had he been? Had you seen him before?

A. No, I hadn't seen him. He probably came, you know, with the kids when they was shouting--

Q. In other words, when the extra batch of kids, when the shouting started, he probably came out then. You didn't particularly notice him until you saw him going back across the street by himself. Is that it?

A. Yes.

Q. Now, so he went up the stoop and had his hands on the door?

A. Right.

Q. And then this same man with the white shirt, who took the hose away, called to him?

A. Yes.

Q. Now, where was the man with the white shirt when he called to him?

A. He ran up on the stoop.

Q. The man with the white shirt?

A. Yes.

Q. All right. Now, let's get this clear: The Powell boy was, at that point, at the top of the stoop?

A. Yes.

Q. Right. And he turned around, and the man with the whiteshirt was down at the bottom steps of the stoop?

A. No. He was right up on the boy.

Q. He was right up practically on the same step with the boy?

A. He was on the same step.

Q. Where were you at that point?

A. I was at the bottom of the step.

Q. You mean you crossed the street too?

A. Yeah. I told him not to go over there--

Q. Why did you cross the street?

A. I was pulling him back. I told him not to go over there 'cause something was liable to happen.

Q. Okay. Let's go back over that again. You saw the Powell boy. You were back on the school side of the street, and you saw the Powell boy start to cross the street?

A. Right.

Q. And you said what to him?

A. I said, "Don't go over there cause something's liable to happen."

Q. Did you try to grab his arm.

A. When he kept walking-- Just when he got on the sidewalk, on the north side of the street, I pulled his arm and he jumped away from me.

Q. In other words, you walked along with him?

A. Yes.

Q. Across the street and you tried to grab his arm when he hit the sidewalk?

A. Yes.

Q. Did he say anything to you?

A. He said, "Let me go. I'm just gonna talk to the man."

Q. I see. Did he say what he wanted to talk to him about?

A. No, he say he just gonna talk to the man.

Q. I see. Then you were right at the bottom of the stoop at that point?

A. Right.

Q. Were you at the bottom of the stoop or on the sidewalk?

A. I was at the bottom of the stoop.

Q. At the bottom of the stoop. You're designating the laundry side of the stoop, is that right?

A. Yes.

Q. The bottom of the laundry side. The boy went up. The man with the white shirt ran out. Now, when he ran out did you see him have a gun in his hand?

A. Yes. He ran up on the stoop with the gun.

Q. He already had the gun in his hand as he was running up. Is that it?

A. Yes.

Q. At that point, when Powell turned around, what did the man in the white shirt call to him? What did he say?

A. He said, "Hey, you." And Powell turned around.

Q. He said, "Hey, You?" Did he say anything else?

A. No.

Q. Nothing else?

A. Nothing else.

Q. You're sure?

A. I'm sure.

Q. Now, when he said, "Hey, you" like that, Powell turned around?

A. Yes.

Q. Do you remember which hand Powell used to go for the doorknob?

A. This hand.

Q. The right hand?

A. Right.

Q. So when he turned around, which way did he turn? Like that? That is, toward the left? In other words, he had his right hand on the doorknob, and he turned toward the right. He turned around/sort of over his extended arm? The policeman--

A. He turned his whole body around. He did like this.

Q. He turned his body around, as it were, over the extended arm. In other words, with the right hand out toward the doorknob as he turned. Is that correct?

A. He took his whole body off the doorknob.

Q. Oh, I see. He just turned all around; dropped his hand and turned around. Right? Now, when he turned around like that, where was the policeman?

A. Upon him.

Q. Behind him, or on his right or on his left?

A. He was upon him, like this.

Q. I'm Powell, all right? I've got my hand on the doorknob, and you yell, "Hey, you."

A. "Hey, you." He was like that.

Q. Right behind him?

A. Like this.

Q. In other words, Powell had sort of ~~han~~ half turned around and the man in the white shirt was right behind him? Uh huh. I see. Now, at that point, at that very moment, where were Powell's hands? Were they up or down? Can you remember that?

A. They were up.

Q. They were up?

A. Yeah.

Q. In what position?

A. Sort of like that.

Q. In other words, were the elbows bent?

A. Yeah.

Q. Did he wave his hands, or anything? Were his hands still or moving, or what?

A. He waved his right hand.

Q. Now, you were right at the bottom of the stoop and you were in a position to see his hands. Did he have anything in his hands?

A. No.

Q. Nothing at all.

A. He didn't have anything in his hands.

Q. Nothing?

A. Nothing.

Q. Open hand, open palm?

A. Open palm.

Q. Now, why do you think he had his hands up in that position?

A. Cause I called to him before the man did.

Q. What did you say?

A. I say, "He got a gun!"

Q. In other words-- Let's go back over it again, because I want to get it in the right sequence. As you were walking across the street, you said, "Don't go, there's going to be trouble," or something. And you put your arm on Powell, and Powell pulled away and said, "Let me go."

A. Right.

Q. He went up the stoop and you stopped at the bottom of the stoop on the laundry side, looking up toward Powell. Powell put his hand on the doorknob. At that point, the man in the white shirt came out, and you saw him obviously before Powell did.

A. Yes.

Q. Powell then had his back to him, right?

A. Right.

Q. And you saw the man in the white shirt had a gun in his hand?

A. Yes.

Q. Now, did he have his gun raised, or was it at his side?

A. It was at his side. He ran up on the--

Q. Did he have the gun in his right hand or his left hand?

A. Right hand.

Q. He had a gun in his right hand, and he was running out from his building with the gun down.

A. No he wasn't, either.

Q. Then you tell me what it was.

A. He had it at his side.

Q. Which way was the gun pointing?

A. Like that, straight ahead.

Q. In other words, the gun was pointing straight ahead?

A. Yes.

Q. With his elbow bent? He didn't have his arm stretched out. He had his elbow bent and the gun at his side, but the muzzle of the gun was pointing forward in the direction in which he was running?

A. Yes.

Q. Okay. So you said you did what: you yelled at the Powell boy?

A. Yes.

Q. What did you say?

A. I say, "He got a gun!"

Q. I see. So the Powell boy did what at that point? Did he respond? What was the next thing that happened? Did the man with the gun yell, "Hey, you."

A. He say, "Hey, you."

Q. You said, "Look out, he's got a gun--"

A. Just about the same time--

Q. --the same time he said, "Hey you." In other words, this all happene about the same time. Very quickly.

A. Uh huh.

Q. Then the Powell boy started to turn around?

A. Yes.

Q. I would assume that he started to turn around in your direction, 'cause that's what he did, didn't he? In other words, when he was on that doorknob, you said he turned his body to the right.

A. Right.

Q. That would mean he would be turning toward you, 'cause you were standing at the bottom of the stoop on the laundry side.

A. No, no, you got it wrong. See--

Q. Which way did Powell turn?

A. He was over here; he turned this way. But I was over here.

Q. Oh! He turned to the left, Okay, because before you were saying he turned to the right, and I couldn't quite understand why he would do that. As he turned toward the left-- Okay, now as he turned toward the TV side -- you were on the laundry side; Powell turned toward the TV side. Right?

A. Uh huh.

Q. Now, as he was turning, the man in the white shirt, you say, was practically on top of him?

A. Yes.

Q. All right. Now. And Powell had his hands raised. Now actually, if he turned to the left, you couldn't really see the palms of his hands, could you. Or could you?

A. I saw one hand. This one.

Q. You saw his left hand. In other words, if you are Powell and I'm you, and you're standing there and facing toward the door, and you turn around that way-- I'll tell you what. You stand over there, right? Now, I'm Powell, and I'm on the doorknob. You yell; the cop yells; I turn around this way. Right? I bring my hands up. Is that the way it was? I was turning toward the left. Is that right?

A. Yes.

Q. And then you could see his hands from where you were?

A. Yes.

Q. He had brought his hands up? Right?

A. Right.

Q. Now, by that time, the policeman was already on the stoop and practically next to him?

A. Yeah, he was up on him. He was this close.

Q. Now you're saying, when you say "this close," you're saying about a foot away from him? Uh huh. Now, that's when he shot him?

A. Yeah.

Q. Now, could you see where the first shot went?

A. No. But he had it towards his stomach.

Q. In other words, you're saying the first shot hit him-- He had his gun at the waist level and he shot there -- the bullet would have practically had to go into his side. Right?

A. Yes. The first bullet did hit him.

Q. Well, but the question I'm asking is where did the first bullet hit him? The first bullet hit him in the side, or in the arm? You don't know?

A. No, I don't know. I know when he-- He hit his right arm-- When his hands went up-- He hit his right arm, his right arm like that--

The police hit his right arm with his left arm. You know, the police had his left arm out and he hit Powell's right arm.

Q. In other words, when he was turning around like that, the man in the white shirt -- before he shot him?

A. Yes.

Q. Before he shot him, he hit his arm?

A. It was about the same time.

Q. You mean he hit his arm and shot him at the same time?

A. Yes.

Q. In other words, the policeman hit Powell's right arm with his left arm -- with the policeman's left arm -- at the same time the policeman shot him?

A. Yes.

Q. Just about the same time the policeman shot him. Now, when was the second shot fired? Right after?

A. It was when Powell fell down. He was trying to get up and he shot him two more times.

Q. The first shot knocked him down.

A. The first shot knocked him down.

Q. All right, now, Powell is turning around; his arm gets hit; he gets shot. Now, which way did he fall?

A. Face down.

Q. He fell face down. Down the stoop?

A. He fell down the stoop on the sidewalk.

Q. Now as he fell down -- down the steps?

A. Yes.

Q. Was he on the xx top step -- pretty much on the top step when it started, right?

A. Yes.

Q. He fell down the steps onto the sidewalk?

A. Right.. At the foot of the steps.

Q. And then he tried to get up?

A. Yeah. He was trying to get up.

Q. He was trying to get up. How was he trying to get up?

A. He got one knee and one hand. You know, two--

Q. Which knee and which hand?

A. It was this knee.

Q. His right knee and his left hand. He was trying to use his right knee and his left hand to get up?

A. Yeah.

Q. Now, where was the policeman at that point?

A. He was up on the stoop.

Q. Still up on the stoop? And so he shot down at him?

A. Right.

Q. I see. Now, Rosalie, you didn't see the boy carry a knife.

A. No, I didn't see--

Q. Or anything else?

A. No.

Q. Did you know him to carry a knife?

A. No.

Q. There's a boy that told the newspapers that he carried a knife to school for Powell. A boy by the name of Clifton Harris. I picked that up out of the newspapers. Is that possible?

A. I don't know.

Q. You wouldn't know anything about that?

A. I wouldn't know nothing about it.

Q. You had never seen Powell carry a knife.

A. No.

Q. Well, there's no law against carrying a knife anyway. You never saw him go after anybody with a knife.

A. No.

Q. He never went after this Lynch guy with a knife? He didn't have a knife?

A. He didn't have no knife on him.

Q. Now what about that knife they found in the gutter? They found a knife in the gutter. Later on, somebody found a knife in the gutter. It was a horn-handle kind of a knife. Not a switchblade, just a knife with a blade on it. You never saw anything like that with Powell?

A. No.

Q. I see. Rosalie, let me ask you this: There are some people-- There is at least one person whom I've talked to, who says that she saw Powell playing with a knife. You know, quite innocently, but he, in fact, had a knife and was sort of playing around with it, and it closed up, and either had it in his pocket or had it closed up at this time. Is that possible at all?

A. I don't know, cause I didn't see no knife.

Q. You didn't see a knife?

A. I didn't see no knife.

Q. You were in a position to see his hands, so if he had a knife, he didn't have it when he was upon the stoop there.

A. That's right.

Q. Is it possible, Rosalie, that he had the knife when he went up the stoop, and that he threw it away?

A. It could be possible.

Q. You mean you might not have seen that?

A. I didn't see it.

Q. Well you were walking right with him across the street.

A. That's right.

Q. And you didn't see a knife on him at that point?

A. I didn't see no knife on him.

Q. I see. And you didn't see a knife on him on the stoop?

A. That's right.

Q. Now, while this was going on, did Lynch say anything?

A. Lynch wasn't even there yet.

Q. He wasn't there.

A. He went in the house before the boy got shot.

Q. I see. Now, Rosalie, did the policeman say anything after he shot the boy? After he shot Powell, what did the policeman do?

A. He kicked him over.

Q. What do you mean, "he kicked him over?"

A. That's what I mean, after he shot him two times, he came down the stairs and he kicked him over.

Q. I see. Where did he kick him? In his side?

A. Yeah. He kicked him over.

Q. Just sort of turned him over. I mean, he wasn't trying to injure him, he was trying to turn him over. Was that it?

A. I don't know.

Q. He was trying to turn him over to see--

A. I just see him kick him over.

Q. Was Powell still alive at that point?

A. When I saw him, he looked to me like he was breathing.

Q. But he didn't say anything?

A. No.

Q. Now did you say anything to the policeman?

A. I couldn't say anything.

Q. Did you do anything to the policeman?

A. No.

Q. You just stood there.

A. I started screaming.

Q. You started screaming.

A. I stood there for a second, and then I started screaming.

Q. Now did the policeman say anything.

A. I didn't hear him say anything.

Q. Did he pull a badge out or anything?

A. No.

Q. You didn't see that. All right. Now, was there anybody else there at that point? Did somebody else come over across the street?

A. I didn't see nobody, but when I started running I knocked somebody out the way.

Q. In other words, you didn't see anybody, but some people presumably came around. Was there a girl that helped you back into the school, or something?

A. Yes.

Q. Who was that?

A. It was -- uh -- Nellie and Shirley.

Q. Shirley? Which Shirley?

A. Shirley Fletcher [sp?]

Q. Shirley Fletcher [?]. Uh huh. I see. There was another Nellie--

A. Bravo.

Q. Bravo. Was Shelton Ship around there?

A. A boy?

Q. A girl, by the name of Shelton Ship? Nice looking girl.

A. Yes. She's light-skinned, right?

Q. Beg pardon?

A. She's light skinned?

Q. No, I don't--

A. I know one-- I know somebody say that a girl came running after me into the office.

Q. Oh, okay. There was a girl who told us she went back to the office with you. It wasn't one of those two; it was another girl. Though I guess you were pretty upset and you wouldn't necessarily notice. Well, it doesn't really make any difference anyway at this point. Did you ever see that policeman again? Was he still there when you came back out?

A. No.

Q. Now, let me ask you one other thing. Could you give me as many names and addresses of people who might have seen this so that we can get them down here, too.

A. Those are the only two.

Q. Well what about those kids you mentioned before who were standing there before?

A. They was on the other side.

Q. Well, that's all right.

[ROSALIE JOHNSON - Tape III - July 18 - Present: ROSALIE JOHNSON, Mrs. Johnson, George Schiffer - In George Schiffer's office]

Q. Now, Rosalie, one important point that I want to be sure to be accurate about. When you saw the police officer, right at the time of the shooting, did he have any scratches or marks on his arms?

A. No.

Q. None at all?

A. No.

Q. There was no slash, or scratch, or any sort of mark on his arm?

A. No.

Q. Now, there was a photograph in the Daily News on July 17th, in the center-fold. I'll show you the photograph -- and it shows Lt. Gilligan and Mr. Lynch at Roosevelt Hospital. Now, it also shows Mr. Lynch with completely bare arms and I see no marks on them. Now, Mr. Lynch was not actually where Powell could get at him. Right?

A. Right.

Q. He was inside the building and he didn't come out?

A. That's right.

Q. Now the photograph of Lt. Gilligan shows his right arm, and there aren't any marks on his right arm. Now, it shows a bandage around his right hand, particularly the right little finger.

A. How can he have a bandage on his right hand when he shot with that hand?

Q. Well, the point is that we are advised that he went down to the hospital and got that bandage put on after. Now, what I wanted to ask you was, how could he have hurt his right hand. Did you see him hurt his right hand.

A. No. He shot with that hand.

Q. He shot with that hand. You're sure of that?

A. I'm positive.

Q. He hit him with his left hand?

A. He hit him with his left hand; he shot with his right hand.

Q. And you're positive of that?

A. I'm positive about it.

Q. I see. So that any injury to his right hand could not have been caused by Powell?

A. Right.

Q. You're sure of that.

A. I'm positive.

Q. He might have done that some other way later?

A. Uh huh.

Q. But it wasn't Powell that caused that injury to his right hand?

A. That right.

Q. I see. Okay. The Daily News of the same date also carried another photograph of Lt. Gilligan which shows -- that photograph is on page 2 -- and shows Gilligan's arm bandaged almost up to the elbow. It shows the entire right hand bandaged. Now, is there anything that you know of that would explain why he had to get his arm bandaged?

A. No.

Q. No?

A. Nothing.

Q. Nothing. All right. Now, Rosalie, the police questioned you; is that right?

A. Yes.

Q. How did they find you?

A. At the school.

Q. What did they do?

A. I was in the office.

Q. Who's office?

A. Mr. Tragle's [sp?] office.

Q. Mr. Tragle [?] the principal?

A. Yes. And I was upset, and I was in there -- I couldn't stay there -- I wouldn't dare cause so many people gave my name, you know--

Q. Do you remember the policeman who came up to you?

A. No. I don't know his name, but if I seen him again I remember him.

Q. What did he say to you?

A. He asked me what happen?

Q. What did you say? Do you remember what you said?

A. I say I don't know. I don't want to say anything cause I don't want to get dragged into it. But then he say so many people gave my name, you know, to him, as a material witness. So he said that if I didn't say nothing now, you know, that he can get a court order for my arrest as a material witness.

Q. In other words, he threatened your arrest?

A. No, he didn't say that, but he say something like it.

Q. He said he could get a court order for your arrest as a material witness?

A. I don't remember exactly what he said.

Q. Well, what did you do then?

A. I told him.

Q. Told him what happened?

A. Yeah.

Q. Well what did he say then?

A. He just took down the story and told me to wait in the office.

Q. How long did you wait?

A. To around 10:00.

Q. Did you call your mother?

A. No.

Q. Did anybody call your mother?

A. No. I don't want her to be called.

Q. And then what happened -- at 10:00.

A. They took me down to this office -- in the precinct.

Q. That was the 19th Precinct, on 67th Street?

A. Yes.

Q. How did they take you down?

A. By car.

Q. How many policemen were there? Who else was in the car?

A. Three policemen -- three detectives. Me and Shirley.

Q. Shirley Fletcher [?]. Now, was the policeman who questioned you -- was he a uniformed policeman or was he a detective.

A. He was a detective.

Q. They took you down to the 19th Precinct, then what did they do?

A. They asked us for our story, and we started talking to them.

Q. Both of you at the same time?

A. No.

Q. Well what did they do? Take you into a room?

A. Uh huh. Yeah, separate rooms.

Q. I see. Who was with you in the room that you were in?

A. They was two detectives.

Q. Was there a stenographer there -- you know, steno?

A. No--

Q. Just the two detectives?

A. Yes.

Q. Was there a tape recorder there?

A. No. One was writing down my story.

Q. I see. There was two detectives and one of them was writing it down. How long did he keep you in there?

A. About one o'clock.

Q. You mean, from about a little after ten to one--

A. Yes.

Q. --these two detectives were asking you questions?

A. Yes.

Q. Did they get you anything to eat?

A. Yeah, they got me something to eat. They bought me soda; then they bought me sandwiches.

Q. I see. Did they call your mother?

A. No. They told me I was going to be back for my third period class.

Q. When was your third period class?

A. Ten minutes to twelve -- or 11:30.

Q. Well, anyway, so at one o'clock did they call your mother.

A. No. I was still in the office.

Q. Did they tell you you had a right to call your mother.

A. Yeah, they told me.

Q. Well, why didn't you call your mother?

A. I called her at 2:30. See, I thought I was going to be home around-- I usually get home like 2:00, you know, from school.

Q. I see. So, anyway, at 1:00, what happened then?

A. They still kept me there. Had my story. Then I was sitting down and my other friend came in -- the other kids that was there came in.

Q. Into this room with the two detectives.

A. Yes.

Q. What other kids?

A. The ~~two~~ children that was with me.

Q. Well, which ones?

A. Shirley Fletcher[?], Eddie--

Q. Eddie Samson?

A. Yes. Carl--

Q. Carl Dudley? You were all in the same room together?

A. No. They let us walk around after they had our stories. But they wouldn't let us talk to each other.

Q. I see. Did they just sort of let you walk around and they kept you waiting around. Is that it?

A. Yes.

Q. Then what happened? About 2:30 you called home. Right?

A. ~~Right~~ Yes.

Q. And then what?

A. They said I was going home in a few more minutes. And I told my mother I was going home in a few more minutes.

Q. Then what?

A. Then we went into this room to be teletaped -- a tape recorder. They got our stories down there. Then we went upstairs.

Q. Who was with you in that room?

A. There were one -- two -- three -- four-- I think it was two detectives, and two men with sport shirts on.

Q. One of them named Hennigan?

A. I don't know his name.

Q. A guy from the DA's office.

A. I think I know, uh, Detective-- I think his last name's Carney, or something like that.

Q. All right, it doesn't matter. And then what? They took you upstairs.

A. Yes.

Q. What happened upstairs?

A. Then I waited there. Then this lady came, and she had just came in, and then they let her go in before me, and them they let these three other boys go in before me. And I was waiting all that time.

Q. And then what? Then you finally got in?

A. Yeah. But I had to go back again.

Q. When you went into this other room, who was there?

A. There was four detectives and the DA--

Q. Oh that's where the DA was? And then what? They made you wait some more after you had told him the story, and then you had to go back in again?

A. Yes. As a matter of fact, when I was in there I had to tell it again, and then I had to tell it again.

Q. I see. Now, tell me something: Did they at any time tell you not to talk to anybody about this?

A. No. But the detective that I was with all the time, he told me not to talk to no newsmen about it.

Q. Was he the guy who was rushing you out when you walked right by us about 6:30?

A. Yes. Oh, you were there! Right?

Q. That's right!

A. Oh, I thought I'd seen you some place! I was so tired.

Q. Of course you were. Now let's see, when they were questioning you they made you go through this about four or five times?

A. I think it was more than that.

Q. When they did this, did they try to get you to change the story?

A. Yes they did.

Q. What did they suggest to you? What did they say to you? I mean, did they call you a liar?

A. No.

Q. Did they suggest you were lying to them?

A. They didn't say it that way.

Q. Well how did they say it?

A. They kept saying things, you know back, so I could say, you know, well he did. And they said, "He had a knife, didn't he? Didn't he have a knife? The man that shot him, he had, you know, he badge on, didn't he?" You know, they kept on forcing me to say things--

Q. In other words, they were trying to suggest to you that he had his badge on. But in fact he didn't have a badge on?

A. He didn't have no badge on.

Q. You never saw a badge on him.

A. I never seen no badge on him.

Q. And you didn't see a knife on the boy?

A. No, I didn't see no knife.

Q. Did they try to suggest to you that something different about the way it happened?

A. Yes.

Q. What did they try to suggest to you?

A. They tried to say that his-- you know, the boy while he was walking, his hand was like this -- They even wrote it that way, you know, but I erased it. They tried to write more into--

Q. Now, who was "they?" Who tried to do that?

A. The detectives that was there.

Q. Did the DA try to do that?

A. No.

Q. The DA didn't try to do that?

A. No.

Q. Just the detectives?

A. Yeah.

Q. Which detectives? The ones you talked to up until one o'clock, or the ones that--

A. Yes, the ones that I talked to up till one o'clock.

Q. Those guys. Were those the guys that took you out?

A. Yes.

Q. Those same people who took you out?

A. No, those wasn't the ones.

Q. What about the detectives you talked to before the tape recorder? Did they try to do this to you?

A. No.

Q. Just that first bunch. They kept trying to get you to change your story?

A. Yes.

Q. All right. Well, gee, I think that's about all, as far as I'm concerned. Thank you very much.

A. You're welcome.

MSS
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GILMORE, JESSIE et. al. VS. La Coste, Edna et. al. BATON ROUGE, LOUISIANA 1965
(PUBLIC ACCOMODATIONS)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

JESSIE GILMORE, FRED P. PAYTON,
DAVID NOFLIN, SAMSON GILMORE,
ALVERSTA GILMORE,

plaintiffs,

vs. CIVIL ACTION
3282
July 16, 1965

EDNA LA COSTE, MR. DOULETTE,
CHARLES YOUNG SR., WILLIAM TIGER,
JOHN DOE,

defendants

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## PETITION FOR INJUNCTION AND DAMAGES

I.

The jurisdiction of this Court is asserted under 42 U.S.C. 1983, 1985 1986, 28 U.S.C. 1331, 1343, and the Civil Rights Act of 1964, section 201 (b) and (c), and section 202.

Defendant La Coste is the owner of the Oaks Bar Located in St. Francisville, Louisiana. Defendant Douletted is the manager of the Oaks Bar, and defendant Joe Doe is a bartender at that establishment. Both Doulette and Doe are employees of defendant LaCoste.

Defendants Young and Tiger are white male citizens of the State of Louisiana and of the Parish of West Feliciana, and were at all time pertinent herein patrons of the Oaks Bar.

The Oaks Bar is a place of accomodation open to the public and does not in any way manifest an intention to restrict its patronage. Said Oaks Bar offers to serve beverages of various kinds which have passed in commerce between the States of the United States.

The Oaks Bar further provides a place of entertainment open to its patrons. This place of entertainment is known as the "pool room."

## II.

Plaintiffs are Negro citizens of the State of Louisiana and of the United States who, having obtained service on terms not equal to those offered to patrons of the white race, to-wit, that they were charged $.50 each for five cokes when defendant Doe admitted that the price for others is only $.10, were physically set upon, beaten and ejected by defendants Young, Tiger and others and with the aid and support of Defendants Doulette and Doe.

Plaintiffs allege that the sole purpose of the attack was to intimidate them in the exercise of their rights as citizens of the State of Louisiana and of the United States.

## III.

Plaintiffs allege that the defendants and each of them were acting pursuant to the laws, customs and useages of the State of Louisiana in an effort to deny plaintiffs the full and equal enjoyment of their rights.

Plaintiffs allege that defendants and each of them were acting pursuant to statutes and ordinances of the State of Louisiana and the Town of St. Francisville requiring separation of the races in places of public accomodation.

Plaintiffs allege that because of the actions of the defendants plaintiffs have suffered and continue to suffer anguish, mortification and humiliation to their great distress.

Plaintiffs allege that the Oaks Bar is a place of public accomodation under the letter and spirit of the Civil Rights Act of 1964, titleII in that it offers to serve liquids for human consumption which have been transported in interstate commerce.

Plaintiffs allege further that if this Court finds that the provisions of Title II of the Civil Rights Act of 1964 are limited to "food" meaning only solids for human consumption which have been transported interstate, that section 201 (b) is unconstitutional in that it denies them the protection of Equal laws under the Fourteen Amendment of the Constitution of the United States.

IV.

Plaintiffs represent that they have this day filed with the Twentieth Judicial District Court for the Parish of West Feliciana a Civil Action to determine the questions of state law involved in this cause, and that under the Doctrine of England v. Louisiana Board of Medical Examiners, 375 U.S. 411 (1964) the cause alleged in this complaint must be stayed pending the outcome of the issues raised in the abovementioned state proceedin

WHEREFORE plaintiffs pray that upon the determination of the issues raised in the State Court in this cause, and upon hearing in this Court on the questions raised herein, that an injunction issue from this Court enjoining the defendats and each of them from in any way interfering with the plaintiffs in the free exercise of rights guaranteed to them by the Constitution and laws of the United States;

And that this Court award to plaintiffs and each of them damages in the amount of TEN THOUSAND DOLLARS EACH plus costs and fees necessitated by this action.

By Attorney,

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

Signed:____________________________
Murphy W. Bell

TWENTIETH JUDICIAL DISTRICT COURT
PARISH OF WEST FELICIANA
STATE OF LOUISIANA

JESSIE GILMORE, FRED P. PAYTON,
DAVID NOFLIN, SAMNSON GILMORE,
ALVERSTA GILMORE,

plaintiffs

v. CIVIL ACTION

EDNA LA COSTE, CHARLES YOUNG, SR.,
WILLIAM TIGER, MR. DOULETTE, AND
JOHN DOE'S 1-10,

July 16, 1965

defendants

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## PETITION FOR DAMAGES

The petition of JESSIE GILMORE, FRED P. PAYTON, DAVID NOFLIN, SAMNSON GILMORE, and ALVERSTA GILMORE, plaintiffs, Negro residents of lawful age of the Parish of West Feliciana, respectfully represent:

I.

That the defendants are residents of the Parish of West Feliciana; that on the 3rd day of July, 1964 at about 6:00 P.M. plaintiffs entered the Oaks Bar, located at the conjunction of Route 10 and Frederick Streets, St. Francisville, West Feliciana Louisiana, for the purpose of purchasing some refreshment.

II.

That plaintiffs entered the Oaks Bar and ordered five cokes from defendant John Doe 1 who was at that time the bartender on duty. Plaintiffs were served the drinks and told that they would be charged $.50 for each bottle "here" but that the same drinks could cost only $.10 in the "colored" section. Plaintiffs chose to be served in the same manner as other patrons.

III.

That plaintiffs took a seat at a booth in the establishment provided for the use of patrons. At this time defnedants Doulette, the Manager of the Oaks Bar, Young, Tiger and Doe's 2-10 gather about the table at which plaintiffs were sitting and began insisting that they leave. Plaintiffs indicated by their actions that they intended to remain in the peaceful enjoyment of their refreshments.

## IV.

That the defendants considered calling law enforcement official to have to plaintiffs removed, but reconsidered and decided to forceably eject plaintiffs without recourse to the proper agents of the law.

That defendants and each of them did then proceed to push shove and beat the plaintiffs with their hands and with the said of "pool sticks" until plaintiffs were forced to flee from the Oaks Bar for fear of their safety.

## V.

That plaintiff Samson Gilmore did receive a serious blow about his head causing a wound which had to be closed with surgery.

## IV.

That the plaintiffs and each of them suffered bruises caused by the above mentioned blows rendering them sick, sore and lame.

## VII.

That the plaintiffs and each of them have suffered and are continuing to suffer considerable mental anguish and pain and humiliation from the treatment received at the hands of the defendants.

## VIII.

That defendant La Coste is the owner of the abovementioned Oaks Bar and is the employer of the defendant (John Doe 1) bartender and the defendant Doulette, and that she did by the Maintenance of her policy of refusing to serve members of the Negro race directly cause the injuries to the plaintiffs hereinabove enumerated.

Plaintiffs represent that it is their intention in this action that this Court make a determination only of the issues of State law as raised by the factual allegations, and that plaintiffs intend to reserve the federal questions presented by the facts for hearing in the proper Federal Court. *England v. Louisiana Board of Medical Examiners*, 375 U.S. 411 (1964).

The defendant Edna LaCoste is a person of lawful age and capacity and a domiciliary of West Feliciana Parish. The defendant Charles Young, Sr. is a person of lawful age and capacity and a domiciliary of West Feliciana Parish. The defendant William Tiger is a person of lawful age and capacity and a domiciliary of West Feliciana Parish. The defendant John Doe 1 is a person of lawful age and a domiciliary of West Feliciana Parish. Defendants John Doe 2-10 are persons of lawful age and capacity and domiciliaries of West Feliciana Parish.

IX.

WHEREFORE the plaintiff Samson Gilmore prays general and special damages in the amount of five thousand dollars; plaintiffs Payton, Noflin, Jessie Gilmore and Alvesta Gilmore pray general and special damages in the amount of one thousand dollars each.

FURTHER the plaintiffs and each of them pray that the Court assess the liability of the defendants as joint and several, and that this Court grant to the plaintiffs and each of them the costs and fees of bringing this law suit, and for such other relief and orders as the Court may see fit to grant from time to time.

By Attorney:

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

Signed: ______________________________
Murphy W. Bell

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

## UNITED STATES DISTRICT COURT
## FOR THE EASTERN DISTRICT OF LOUISIANA
## BATON ROUGE DIVISION

[illegible]

**MINUTE ENTRY:**
**September 3, 1965**
**WEST, J.**

JESSIE GILMORE, FRED P. PAYTON,
DAVID NOFLIN, SAMSON GILMORE,
ALVERSTA GILMORE

versus

EDNA LaCOSTE, MR. DOULETTE, CHARLES
YOUNG, SR., WILLIAM TIGER, JOHN DOE

CIVIL ACTION
NO. 3242

This cause came on for hearing this day on a motion by defendant, Edna LaCoste, for summary judgment.

PRESENT: Murphy W. Bell, Esq.
Attorney for plaintiffs

Stephen P. Dart, Esq.
Attorney for defendant, Edna LaCoste

There being no objection,

IT IS ORDERED that the motion by defendant, Edna LaCoste, for summary judgment be, and it is hereby, GRANTED.

**********

Murphy W. Bell, Esq.
Robert F. Collins, Esq.
Nils R. Douglas, Esq.

Stephen P. Dart, Esq.

GRAY, VERNA et al. VS. DOE, JOHN MONROE, LOUISIANA 1965

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MISS VERNA GRAY
MRS. BESSIE DILL
MISS STELLA FLOWERS,

Plaintiffs,

vs.

CIVIL ACTION
NO.___________

JOHN DOE, D/B/A BROOKS MOTEL
AND CAFE,

Defendants.

* * * * * * * *

## COMPLAINT

1. Jurisdiction of this Court is invoked pursuant to Title 28 U.S. C. section 1343 (3) and section 1343 (4). This is a suit in equity authorized by and instituted pursuant to Title II of the Act known as the "Civil Rights Act of 1964", 78 Stat. 243, and Title 42 U. S. C. section 1983. The jurisdiction of this Court is invoked to secure protection of civil rights and to redress deprivation of rights, privileges, and immunities secured by (a) the Fourteenth Amendment of the Constitution of the United States, Section 1; (b) the Commerce Clause, Article 1, Section 8, Clause 3 of the Constitution of the United States; (c) Title II of the Act Known as "The Civil Rights Act of 1964," 78 Stat. 243, providing for injunctive relief against discrimination in place of public accommodation and (d) Title 42 U. S. C. section 1981, providing for the equal rights of citizens and all persons within the jurisdiction of the United States.

2. Plaintiffs bring this action on their own behalf and on behalf of others similarly situated pursuant to Rule 23(a) (3) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of other Negro persons to use the goods, services, facilities, privileges, advantages

and accommodations of Brooks Motel and Cafe , without discrimination and segregation on the ground of race or color who are so numerous as to make it impracticable to bring them all before this Court. A common relief is sought. The interests of said class are adequately represented by plaintiffs.

3. This is a proceeding for an injunction restraining defendants from continuing or maintaining any policy, practice, custom and usage of withholding, denying, attempting to withhold or deny, or depriving or attempting to deprive, or otherwise interfering, with the rights of plaintiffs and others similarly situated to admission to and full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations, of Brooks Motel and Cafe without discrimination and segregation on the ground of race or color.

4. Plaintiffs, Verna Gray, Bessie Dill and Stella Flowers are Negro citizens of the United States and the State of Louisiana.

5. The name of defendant is unknown, complainants are unable to secure the name of defendant but alleges on information and belief that said business is a single proprietorship doing business under the laws of Louisiana as Brooks Motel and Cafe at Highway 167, Jonesboro, Louisiana.

6. A. Brooks Motel and Cafe provides lodging to transient guests and contains more than five rooms for rent or hire. The operations of Brooks Motel and Cafe affects travel, trade, traffice, commerce, transportation or communication among, between, and through the several states, the District of Columbia or foreign countries, territories and possessions.

B. Brooks Cafe serves and offers to serve interstate travellers. Its operations affect travel, trade, traffic, commerce, transportation or communications among, between and through the several states, the District of Columbia or foreign countries, territories and possessions. A substantial portion of the food which it serves moves in commerce.

C. Brooks Cafe is physically located within the mises of Brooks Motel and holds itself out as serving patrons such establishment.

7. On Saturday, April 3, 1965 plaintiffs, Verna Gray, Bess Dill, and Stella Flowers along with Mertiel Watson drove to Broo Motel and Cafe in Jonesboro in an attempt to use the facilities there. Before they could enter a white man who saw them arrive ran in and the woman inside turned the "open" sign around so that it read closed. She then came outside and yelled "I'll kill 'em." She ran to a car and got an object about a foot long out while screaming "let 'em come in, I'll kill 'em." She turned the sign to open and stood in the door til they drove off.

8. Plaintiffs were denied and deprived of service at Brooks Motel and Cafe because of defendant's well-established and maintained policy, practice, custom and usage of refusing to serve, and discriminating against Negroes at Brooks Motel and Cafe in violation of Plaintiffs' rights to full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of places of public accommodation without discrimination and segregation on the ground of race or color as secured by (a) the Fourteenth Amendment of the Constitution of the United States; (b) the Commerce Clause, Article 1, section 8, Clause 3 of the Constitution of the United States; (c) Title II, of the Act Known as "The Civil Rights Act of 1964," 78 Stat. 243, providing for injunctive relief against discrimination in places of public accommodation; and (d) Title 42 U.S.C. section 1981.

9. Plaintiffs allege that the racially discriminatory practices of defendant are in continuance of a long-established and maintained policy of defendants in the operation of the Brooks Motel and Cafe. The State of Louisiana has no state law and the City of Jonesboro has no local law prohibiting the racially discriminatory practices described above and establishing or authorizing a state or local authority to grant or seek the relief prayed herein. Plaintiffs have no plain adequate or complete remedy at law to redress these wrongs, and this suit for injunc-

tion is the only means of securing adequate relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendant's policy, practice, custom and usage as set forth herein.

WHEREFORE, plaintiffs pray that the court appoint as agent of defendant to receive this complaint the party who manages the Motel and/or Cafe or the person found at the Motel registering persons into same. Plaintiffs also respectfully pray this Court advance this cause on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited, and upon such hearing to:

1. Forever enjoin defendant, John Doe, D/B/A Brooks Motel and Cafe, their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from continuing or maintaining any policy, practice, custom or usage of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with plaintiffs and others similarly situated in the admission to and use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of Brooks Motel and Cafe on the basis of race or color as contrary to the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause, Article 1, section 8, clause 3 of the Constitution of the United States, Title II, 78 Stat. 243 of the Act known as the "Civil Rights Act of 1964," and Title 42 U.S.C. section 1981.

2. Allow plaintiffs their costs herein, including reasonable attorneys' fees and such other, additional relief as may appear to the Court to be equitable and just.

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

Respectfully submitted,

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET, 523-5197
NEW ORLEANS, LOUISIANA

BY: ______________________

PLEASE SERVE
BROOKS MOTEL AND CAFE
Highway 167
JONESBORO, LOUISIANA
By Leaving a copy with the Manager of The Motel or with the Party Registering Persons into the Motel or with the Party who is Managing the Cafe.

vs. CORE NEW YORK 1966

Society Of Wisconsin

Box 37
Folder 9

Please Retain Original Order

**B 206B—Original Petition, Non-Payment Business: Summary Proceedings: Civil Court. 9-63**
*Prepare 1 original. Use corresponding side of form No. B206BC for carbon copies.*

b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T

38 Park Row Corp.
XXXXXXXXXXXXXXXXXX 119 West 40th Street
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

## *PETITION TO RECOVER POSSESSION OF REAL PROPERTY*

*Non-Payment*

*Business*

The petition of 38 Park Row Corp. respectfully shows that:

1. Petitioner is
   ~~*authorized to institute and maintain this proceeding and is the agent in respect to the premises hereinafter described of~~ the owner and landlord of the premises hereinafter described.
2. Respondent
   is the tenant of said premises who entered in possession thereof under an oral rental agreement made ~~xxxxxxx~~ before the 1st day of April 1965 between respondent and petitioner's predecessor in interest ~~the landlord,~~ wherein respondent promised to pay to the landlord as rent $ 50 each month in advance on the First day of each month.
   ~~Respondent~~
   ~~is the undertenant of the aforesaid respondent tenant.~~
3. Respondents ~~are~~ is now in possession of said premises.
4. The premises from which removal is sought were rented for business purposes and are described and designated as follows: ~~the~~ ~~on the~~ ~~floor,~~ **The Basement** ~~side~~ in building and premises known as No. 38 Park Row, New York, New York which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York
5. That by virtue of the aforesaid agreement there was due and owing by respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the First day of each of said months

| month | rent due | month | rent due | month | rent due |
|---|---|---|---|---|---|
| March 1966 | $50 | 19 | $ | 19 | $ |
| April 1966 | 50 | 19 | | 19 | |
| May 1966 | 50 | 19 | | 19 | |
| June 1966 | 50 | 19 | | 19 | |

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is $200 .

6. That said rent has been duly demanded personally from the tenant since the same became due.
7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.
   Petitioner lacks written information or notice of any address where the respondent tenant ~~resides—is employed—~~has a place of business ~~—has its principal office—place of business~~ in the State of New York, other than the address of the property sought to be recovered.
   ~~The landlord has furnished respondent tenant with an accurate statement of the amount of his emergency rent.~~
   ~~(a) That the rent charged is not greater than the emergency rent fixed for such space~~
   ~~(b) Or that the rent charged has been fixed by arbitration or by the Supreme Court~~
   ~~(c) And that the services furnished by the landlord have not been unreasonably diminished since the effective date of the existing lease or tenancy.~~
   ~~That the premises are not subject to the provisions of the Emergency Commercial Business Space Control Law as amended, by reason of~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of $ 200 with interest from June 1 1966 ; the costs and disbursements of this proceeding.

Dated: New York City
June 15, 1966

38 Park Row Corp.
By: ________________ *Petitioner*
The name signed must be printed beneath
Harold Regenbogen

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Harold Regenbogen being duly sworn deposes and says that deponent ~~is the petitioner in the foregoing petition and~~ has ~~*heard*~~ read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.
~~*That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord.*~~ *That the reason this verification is not made by the petitioner in person is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its* Assistant Secretary *and that the information above stated is from the books and records of the corporation.*

Sworn to before me this 15
day of June 1966.

DAVID I. GOLDBLATT
NOTARY PUBLIC, State of New York
No. 60-6564025
Qualified in Westchester County
Commission Expires March 30, 1968

________________
The name signed must be printed beneath
Harold Regenbogen

*Strike out if inapplicable

Proskauer Rose Goetz & Mendelsohn
*Attorney(s) for Petitioner*
*Office and Post Office Address*
300 Park Avenue
New York, N.Y. 10023
MU8-7300

*B* 207B—Original Notice of Petition — Summary Proceedings.
Non-Payment: Business.

b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T

50504 - 1966

38 Park Row Corp.
xxxxxxxxxxxxxxxxxx 119 W. 40th Street *Petitioner, Landlord Address*
New York, New York

*against*

CORE - Congress of Racial Equality, Inc. *Respondent, Tenant Address*
38 Park Row
New York, New York

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

***NOTICE OF PETITION***
***TO RECOVER POSSESSION OF REAL PROPERTY***
*Non-Payment*
*(Business)*

To CORE - Congress of Racial Equality, Inc.

~~and~~ the respondent tenant ~~the respondent undertenant~~,
above named and described, in possession or claiming possession of premises hereinafter designated and described:
**The basement in building and premises known as No. 38 Park Row, New York, N.Y.**

**Greeting:** You are hereby required forthwith to remove from the premises designated and described as follows, to wit:
~~the~~ ~~on the~~ ~~floor~~, **the basement** ~~side~~ in building and premises known as Number 38 Park Row ~~Ave., Street~~ Borough of Manhattan City of New York, or show cause at the Civil Court of the City of New York, County of New York

50504

before the Clerk of said court at his office at 111 Centre Street
in the Borough of Manhattan in the City of New York, within FIVE DAYS after the service of this notice of petition, why the possession of said premises should not be awarded and delivered to the said petitioner.

TAKE NOTICE that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that demand is made in the petition herein for judgment against you, the respondent tenant for the sum of $ **200** with interest thereon from June 1 1966.

In the event of your failure to appear or answer, final judgment by default may be made and entered against you for the relief demanded in the petition.

*(continued below)

*Dated, New York City, the* 16 *day of* June 1966

/s/ JOHN B. McINERNEY
*Clerk*

## (READ CAREFULLY)

To the above named Respondent Tenant:

TAKE NOTICE that, if the premises designated in the foregoing notice of petition are occupied by you for BUSINESS PURPOSES, and you file no answer with the clerk WITHIN FIVE DAYS after service hereof on you, the issuing of a WARRANT, DISPOSSESSING you from said premises will be STAYED without application to the Court until TEN DAYS AFTER SERVICE OF THESE PAPERS upon you.

/s/ JOHN B. McINERNEY
*Clerk*

TAKE FURTHER NOTICE that you are required to answer before the Clerk of this Court within five (5) days after service upon you of the Notice of Petition and Petition herein.

TAKE FURTHER NOTICE that if you answer, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination. If you fail to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of a warrant for a period of not to exceed ten days from the date of service.

B 206B—Original Petition, Non-Payment
Business: Summary Proceedings: Civil Court. 9-63
*Prepare 1 original. Use corresponding side of form No. B206BC for carbon copies.*

b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

38 Park Row Corp.
~~148 Madison Avenue~~ 119 W. 40th Street
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

Index No. L & T
50503 - 1966

***PETITION TO RECOVER POSSESSION OF REAL PROPERTY***

*Non-Payment*

*Business*

The petition of 38 Park Row Corp. respectfully shows that:

1. Petitioner is
~~*authorized to institute and maintain this proceeding and is the agent in respect to the premises hereinafter described of~~ the owner and landlord of the premises hereinafter described.
2. Respondent
is the tenant of said premises who entered in possession thereof under a written rental agreement made on or about the 31st day of December 1964 between respondent and ~~the landlord,~~ petitioner's predecessor in interest wherein respondent promised to pay to the landlord as rent $ 100 each month in advance on the First day of each month.
~~Respondent~~
~~is the undertenant of the aforesaid respondent tenant.~~
3. Respondent~~s are~~ is now in possession of said premises.
4. The premises from which removal is sought were rented for business purposes and are described and designated as follows: ~~the~~ ~~on the~~ ~~floor,~~ Room 918 ~~side~~ in building and premises known as No. 38 Park Row, New York, New York which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York
5. That by virtue of the aforesaid agreement there was due and owing by respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the First day of each of said month s

| month | rent due | month | rent due | month | rent due |
|---|---|---|---|---|---|
| March 1966 | $ 100 | 19 | $ | 19 | $ |
| April 1966 | 100 | 19 | | 19 | |
| May 1966 | 100 | 19 | | 19 | |
| June 1966 | 100 | 19 | | 19 | |

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is $ 400

6. That said rent has been duly demanded personally from the tenant since the same became due.
7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.

Petitioner lacks written information or notice of any address where the respondent tenant ~~resides~~ ~~is employed~~ has a place of business ~~has its principal office~~ ~~place of business~~ in the State of New York, other than the address of the property sought to be recovered.

~~The landlord has furnished respondent tenant with an accurate statement of the amount of his emergency rent.~~
~~(a) That the rent charged is not greater than the emergency rent fixed for such space~~
~~(b) Or that the rent charged has been fixed by arbitration or by the Supreme Court~~
~~(c) And that the services furnished by the landlord have not been unreasonably diminished since the effective date of the existing lease or tenancy.~~

~~That the premises are not subject to the provisions of the Emergency Commercial Business Space Control Law as amended, by reason of~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of $ 400 with interest from June 1 1966 ; the costs and disbursements of this proceeding.

Dated: New York City
June 15, 1966

38 Park Row Corp.
By: Harold Regenbogen *Petitioner*
The name signed must be printed beneath
Harold Regenbogen

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Harold Regenbogen being duly sworn deposes and says that deponent ~~is the petitioner in the foregoing petition and~~ has ~~*heard*~~ read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

~~*That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord.*~~ *That the reason this verification is not made by the petitioner in person is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its* Assistant Secretary *and that the information above stated is from the books and records of the corporation.*

Sworn to before me this 15
day of June 1966.

DAVID I. S.
NOTARY PUBLIC, State of New York
No. 60-6564025
Qualified in Westchester County
Commission Expires March 30, 1968

Harold Regenbogen
The name signed must be printed beneath
Harold Regenbogen

*Strike out if inapplicable

Proskauer Rose Goetz & Mendelsohn
*Attorney(s) for Petitioner*
*Office and Post Office Address*
300 Park Avenue
New York, N.Y. 10023
MU8-7300

B 207B—Original Notice of Petition — Summary Proceedings. Non-Payment: Business. b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T
50503 - 1966

38 Park Row Corp.
~~148 Madison Avenue~~ 119 West 40th St. *Petitioner, Landlord Address*
New York, New York

*against*

CORE - Congress of Racial Equality, Inc. *Respondent, Tenant Address*
38 Park Row
New York, New York

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

*NOTICE OF PETITION*
*TO RECOVER POSSESSION OF REAL PROPERTY*
*Non-Payment (Business)*

To CORE - Congress of Racial Equality, Inc.
~~and~~ the respondent tenant ~~the respondent undertenant,~~
above named and described, in possession or claiming possession of premises hereinafter designated and described:

**Room 918 in building and premises known as No. 38 Park Row, New York, New York**

**Greeting:** You are hereby required forthwith to remove from the premises designated and described as follows, to wit: ~~the~~ ~~on the~~ ~~floor,~~ **Room 918** ~~side~~ in building and premises known as Number 38 Park Row ~~Ave., Street,~~ Borough of Manhattan City of New York, or show cause at the Civil Court of the City of New York, County of New York

before the Clerk of said court at his office at 111 Centre Street in the Borough of Manhattan in the City of New York, within FIVE DAYS after the service of this notice of petition, why the possession of said premises should not be awarded and delivered to the said petitioner.

TAKE NOTICE that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that demand is made in the petition herein for judgment against you, the respondent tenant for the sum of $ **400** with interest thereon from June 1 1966.

In the event of your failure to appear or answer, final judgment by default may be made and entered against you for the relief demanded in the petition.

*(continued below)

*Dated, New York City, the* 16 *day of* June 1966

/s/ JOHN B. McINERNEY
*Clerk*

**(READ CAREFULLY)**

To the above named Respondent Tenant:

TAKE NOTICE that, if the premises designated in the foregoing notice of petition are occupied by you for BUSINESS PURPOSES, and you file no answer with the clerk WITHIN FIVE DAYS after service hereof on you, the issuing of a WARRANT, DISPOSSESSING you from said premises will be STAYED without application to the Court until TEN DAYS AFTER SERVICE OF THESE PAPERS upon you.

/s/ JOHN B. McINERNEY
*Clerk*

TAKE FURTHER NOTICE that you are required to answer before the Clerk of this Court within five (5) days after service upon you of the Notice of Petition and Petition herein.

TAKE FURTHER NOTICE that if you answer, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination. If you fail to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of a warrant for a period of not to exceed ten days from the date of service.

50503

**B 206B**—Original Petition, Non-Payment
Business: Summary Proceedings: Civil Court. 9-63
*Prepare 1 original. Use corresponding side of form No. B206BC for carbon copies.*

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T 49550 - 1966

38 Park Row Corp.
~~148 Madison Avenue~~ 119 W. 40th Street
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

*~~Respondent, Undertenant Address~~*

*~~First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described~~*

*PETITION TO RECOVER POSSESSION OF REAL PROPERTY*
*Non-Payment*
*Business*

The petition of 38 Park Row Corp. respectfully shows that:

1. Petitioner is
*~~authorized to institute and maintain this proceeding and is the agent in respect to the premises hereinafter described of~~ the owner and landlord of the premises hereinafter described.

2. Respondent
is the tenant of said premises who entered in possession thereof under~~,~~ A written rental agreement made on or about the 18th day of May 19 62 between respondent and petitioner's predecessor in interest ~~the landlord,~~ wherein respondent promised to pay to the landlord as rent $ 1041.67 each month in advance on the First day of each month.
~~Respondent is the undertenant of the aforesaid respondent tenant.~~

3. Respondent~~s~~ is ~~are~~ now in possession of said premises.

4. The premises from which removal is sought were rented for business purposes and are described and designated as follows: ~~the~~ ~~on the~~ ~~floor,~~ Rooms 312-320 ~~side~~ in building and premises known as No. 38 Park Row, New York, New York which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York

5. That by virtue of the aforesaid agreement there was due and owing by respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the First day of each of said months

| month | | rent due | month | | rent due | month | | rent due |
|---|---|---|---|---|---|---|---|---|
| March | 1966 | $ 541.67 | | 19 | $ | | 19 | $ |
| April | 1966 | 1041.67 | | 19 | | | 19 | |
| May | 1966 | 1041.67 | | 19 | | | 19 | |
| June | 1966 | 1041.67 | | 19 | | | 19 | |

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is $ 3,666.68 .

6. That said rent has been duly demanded personally from the tenant since the same became due.

7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.

Petitioner lacks written information or notice of any address where the respondent tenant ~~—resides—is employed—~~has a place of business~~—has its principal office—place of business~~ in the State of New York, other than the address of the property sought to be recovered.

~~The landlord has furnished respondent tenant with an accurate statement of the amount of his emergency rent.~~

~~(a) That the rent charged is not greater than the emergency rent fixed for such space~~

~~(b) Or that the rent charged has been fixed by arbitration or by the Supreme Court~~

~~(c) And that the services furnished by the landlord have not been unreasonably diminished since the effective date of the existing lease or tenancy.~~

~~That the premises are not subject to the provisions of the Emergency Commercial-Business Space Control Law as amended, by reason of~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of $ 3,666.68 with interest from June 1 1966 ; the costs and disbursements of this proceeding.

Dated: New York City
June 15, 1966

38 Park Row Corp.
By: ............ *Petitioner*
The name signed must be printed beneath
Harold Regenbogen

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Harold Regenbogen being duly sworn deposes and says that deponent ~~is the petitioner in the foregoing petition and~~ has ~~*heard*~~ read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

*~~That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord.~~ That the reason this verification is not made by the petitioner in person is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its* Assistant Secretary *and that the information above stated is from the books and records of the corporation.*

Sworn to before me this 15
day of June 1966.

DAVID I. GOLDBLATT
NOTARY PUBLIC, State of New York
No. 60-6564025
Qualified in Westchester County
Commission Expires March 30, 19[illegible]

............
The name signed must be printed beneath
Harold Regenbogen

*Strike out if inapplicable

Proskauer Rose Goetz & Mendelsohn
*Attorney(s) for Petitioner*
*Office and Post Office Address*
300 Park Avenue
New York, N.Y. 10023
MU8-7300

B 207B — Original Notice of Petition — Summary Proceedings.
Non-Payment: Business.
b

Served on C.C. 6/16/66

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T 49550 - 1966

38 Park Row Corp.
~~148 Madison Avenue~~ 119 W. 40th Street *Petitioner, Landlord Address*
New York, New York

*against*

CORE - Congress of Racial Equality, Inc. *Respondent, Tenant Address*
38 Park Row
New York, New York

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

*NOTICE OF PETITION*
*TO RECOVER POSSESSION OF REAL PROPERTY*
*Non-Payment*
*(Business)*

To CORE - Congress of Racial Equality, Inc.

~~and~~ the respondent tenant ~~the respondent undertenant~~, above named and described, in possession or claiming possession of premises hereinafter designated and described: **Rooms 312-320 in building and premises known as No. 38 Park Row, New York, New York**

**Greeting:** You are hereby required forthwith to remove from the premises designated and described as follows, to wit: ~~the~~ ~~on the~~ ~~floor~~, Rooms 312-320 ~~side~~ in building and premises known as Number 38 Park Row ~~Ave., Street~~, Borough of Manhattan City of New York, or show cause at the Civil Court of the City of New York, County of New York

before the Clerk of said court at his office at 111 Centre Street in the Borough of Manhattan in the City of New York, within FIVE DAYS after the service of this notice of petition, why the possession of said premises should not be awarded and delivered to the said petitioner.

TAKE NOTICE that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that demand is made in the petition herein for judgment against you, the respondent tenant for the sum of $ 3666.68 with interest thereon from June 1 1966.

In the event of your failure to appear or answer, final judgment by default may be made and entered against you for the relief demanded in the petition.

*(continued below)

*Dated, New York City, the* 16 *day of* June 1966

/s/ JOHN B. McINERNEY
*Clerk*

## (READ CAREFULLY)

To the above named Respondent Tenant:

TAKE NOTICE that, if the premises designated in the foregoing notice of petition are occupied by you for BUSINESS PURPOSES, and you file no answer with the clerk WITHIN FIVE DAYS after service hereof on you, the issuing of a WARRANT, DISPOSSESSING you from said premises will be STAYED without application to the Court until TEN DAYS AFTER SERVICE OF THESE PAPERS upon you.

/s/ JOHN B. McINERNEY
*Clerk*

TAKE FURTHER NOTICE that you are required to answer before the Clerk of this Court within five (5) days after service upon you of the Notice of Petition and Petition herein.

TAKE FURTHER NOTICE that if you answer, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination. If you fail to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of a warrant for a period of not to exceed ten days from the date of service.

49550

B 206B—Original Petition, Non-Payment
Business: Summary Proceedings: Civil Court. 9-63
*Prepare 1 original. Use corresponding side of form No. B206BC for carbon copies.*

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T 60416
~~50503~~XXXX~~1966~~X -1966

38 Park Row Corporation
**119 W. 40th Street**
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

## *PETITION TO RECOVER POSSESSION OF REAL PROPERTY*

*Non-Payment*
*Business*

The petition of 38 Park Row Corp. respectfully shows that:

1. Petitioner is
*~~authorized to institute and maintain this proceeding and is the agent in respect to the premises hereinafter described of~~ the owner and landlord of the premises hereinafter described.

2. Respondent
is the tenant of said premises who entered in possession thereof under **a written** ~~rental agreement made on or about~~ the **31st** day of **December** 19**64** between respondent and Petitioner's predecessor in interest ~~the landlord~~, wherein respondent promised to pay to the landlord as rent $ **100** each month in advance on the First day of each month.
~~Respondent~~
~~is the undertenant of the aforesaid respondent tenant.~~

3. Respondents is ~~are~~ now in possession of said premises.

4. The premises from which removal is sought were rented for business purposes and are described and designated as follows: ~~the~~ ~~on the~~ ~~floor,~~ **Room 918** ~~side~~ in building and premises known as No. 38 Park Row, New York, New York which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York

5. That by virtue of the aforesaid agreement there was due and owing **by** respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the First day of each of said months.

| month | rent due | month | rent due | month | rent due |
|---|---|---|---|---|---|
| June 1966 | $ **100** | 19 | $ | 19 | $ |
| July 1966 | **100** | 19 | | 19 | |
| 19 | | 19 | | 19 | |
| 19 | | 19 | | 19 | |

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is $ **200**.

6. That said rent has been duly demanded personally from the tenant since the same became due.

7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.
Petitioner lacks written information or notice of any address where the respondent tenant—resides—is employed—has a place of business ~~has its principal office—place of business in~~ the State of New York, other than the address of the property sought to be recovered.
~~The landlord has furnished respondent tenant with an accurate statement of the amount of his emergency rent.~~
~~(a) That the rent charged is not greater than the emergency rent fixed for such space~~
~~(b) Or that the rent charged has been fixed by arbitration or by the Supreme Court~~
~~(c) And that the services furnished by the landlord have not been unreasonably diminished since the effective date of the existing lease or tenancy.~~
~~That the premises are not subject to the provisions of the Emergency Commercial Business Space Control Law as amended, by reason of~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of $ **200** with interest from June 1 1966; the costs and disbursements of this proceeding.

Dated: New York City
July 1st, 1966

38 Park Row Corp.
By: Harold Regenbogen *Petitioner*
The name signed must be printed beneath
Harold Regenbogen-Ass't. Secretary

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Harold Regenbogen being duly sworn deposes and says that deponent ~~is the petitioner in the foregoing petition and~~ has ~~*heard*~~ read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.
~~*That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord. That the reason this verification is not*~~ *made by the petitioner in person is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its* Assistant Secretary *and that the information above stated is from the books and records of the corporation.*

Sworn to before me this 1st
day of July 1966.

Stephen Seldin
STEPHEN SELDIN
Notary Public, State of New York
No. 24-8913750 Qual. in Kings
Cert. filed in New York Count
Commission Expires March 30, 1968

Harold Regenbogen
The name signed must be printed beneath
Harold Regenbogen

Proskauer Rose Goetz & Mendelsohn
*Attorney(s) for Petitioner*
*Office and Post Office Address*
300 Park Avenue
New York, N.Y. 10022

*Strike out if inapplicable

B 2078--Original Notice of Petition — Summary Proceedings. Non-Payment: Business. b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

Index No. L & T
~~[illegible]~~
60416 - 1966

38 Park Row Corp.
~~[illegible]~~ **119 W. 40th St.**
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

~~*Respondent, Undertenant Address*~~

~~First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described —~~

*NOTICE OF PETITION*
*TO RECOVER POSSESSION OF REAL PROPERTY*
*Non-Payment (Business)*

To CORE - Congress of Racial Equality, Inc. the respondent tenant ~~and~~ ~~the respondent undertenant~~, above named and described, in possession or claiming possession of premises hereinafter designated and described:

**Room 918 in building and premises known as No. 38 Park Row, New York, New York**

**Greeting:** You are hereby required forthwith to remove from the premises designated and described as follows, to wit: ~~the~~ ~~on the~~ ~~floor,~~ **Room 918** ~~side~~ in building and premises known as Number 38 Park Row ~~Ave., Street,~~ Borough of Manhattan City of New York, or show cause at the Civil Court of the City of New York, County of New York

before the Clerk of said court at his office at 111 Centre Street in the Borough of Manhattan, in the City of New York, within FIVE DAYS after the service of this notice of petition, why the possession of said premises should not be awarded and delivered to the said petitioner.

TAKE NOTICE that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that demand is made in the petition herein for judgment against you, the respondent tenant for the sum of $ **200** with interest thereon from June 1 1966.

In the event of your failure to appear or answer, final judgment by default may be made and entered against you for the relief demanded in the petition.

*(continued below)

*Dated, New York City, the day of* July 7 19 66

/A/ JOHN B. Mc INERNEY
*Clerk*

## (READ CAREFULLY)

To the above named Respondent Tenant:

TAKE NOTICE that, if the premises designated in the foregoing notice of petition are occupied by you for BUSINESS PURPOSES, and you file no answer with the clerk WITHIN FIVE DAYS after service hereof on you, the issuing of a WARRANT, DISPOSSESSING you from said premises will be STAYED without application to the Court until TEN DAYS AFTER SERVICE OF THESE PAPERS upon you.

/A/ JOHN B. Mc INERNEY
*Clerk*

TAKE FURTHER NOTICE that you are required to answer before the Clerk of this Court within five (5) days after service upon you of the Notice of Petition and Petition herein.

TAKE FURTHER NOTICE that if you answer, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination. If you fail to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of a warrant for a period of not to exceed ten days from the date of service.

B 206B—Original Petition, Non-Payment
Business: Summary Proceedings: Civil Court. 9-63
Prepare 1 original. Use corresponding side of form No. B206BC for carbon copies.

b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

38 Park Row Corporation
**119 West 40th Street**
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial
Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

XXXXXXXXXXXXXXX
~~*Respondent, Undertenant Address*~~
XXXXXX

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

Index No. L & T
XXXXXXXXXX1966X
60414 - 1966

**PETITION TO RECOVER POSSESSION OF REAL PROPERTY**
*Non-Payment*
*Business*

The petition of 38 Park Row Corp. respectfully shows that:

1. Petitioner is
*~~authorized to institute and maintain this proceeding and is the agent in respect to the premises hereinafter described of~~ the owner and landlord of the premises hereinafter described.
2. Respondent
is the tenant of said premises who entered in possession thereof under **an oral** rental agreement made **befo**XXXXXXut the **1st** day of **April** 19**65** between respondent and Petitioner's predecessor in interest/XXXXXXXX, wherein respondent promised to pay to the landlord as rent $ 50 each month in advance on the First day of each month.
~~Respondent is the undertenant of the aforesaid respondent tenant.~~
3. Respondents is now in possession of said premises.
4. The premises from which removal is sought were rented for business purposes and are described and designated as follows: XX XXXXX XXX **The Basement** XXe in building and premises known as No. 38 Park Row, New York, New York which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York
5. That by virtue of the aforesaid agreement there was due and owing by respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the First day of each of said months.

| month | rent due | month | rent due | month | rent due |
|---|---|---|---|---|---|
| June 1966 | $50 | 19 | $ | 19 | $ |
| July 1966 | 50 | 19 | | 19 | |
| 19 | | 19 | | 19 | |
| 19 | | 19 | | 19 | |

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is $**100**.
6. That said rent has been duly demanded personally from the tenant since the same became due.
7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.

Petitioner lacks written information or notice of any address where the respondent tenant—resides—is employed—has a place of business ~~has its principal office—place of business in~~ the State of New York, other than the address of the property sought to be recovered.

~~The landlord has furnished respondent tenant with an accurate statement of the amount of his emergency rent.~~
~~(a) That the rent charged is not greater than the emergency rent fixed for such space~~
~~(b) Or that the rent charged has been fixed by arbitration or by the Supreme Court~~
~~(c) And that the services furnished by the landlord have not been unreasonably diminished since the effective date of the existing lease or tenancy.~~

~~That the premises are not subject to the provisions of the Emergency Commercial-Business Space Control Law as amended, by reason of~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of $**100** with interest from June 1 1966; the costs and disbursements of this proceeding.

Dated: New York City
July 1, 1966

38 Park Row Corp.
By: Harold Regenbogen *Petitioner*
The name signed must be printed beneath
Harold Regenbogen-Ass't. Secretary

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Harold Regenbogen being duly sworn deposes and says that deponent is ~~the petitioner in the foregoing petition and~~ has ~~*heard*~~ read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

~~*That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord.* That the reason this verification is not made by the petitioner~~ *in person is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its* Assistant Secretary *and that the information above stated is from the books and records of the corporation.*

Sworn to before me this 1st.
day of July 1966.

Stephen Seldin
STEPHEN SELDIN
Notary Public, State of New York
No. 24-8913750 Qual. in Kings
Cert. filed in New York County
Commission Expires March 30, 1968

Harold Regenbogen
The name signed must be printed beneath
Harold Regenbogen

Proskauer Rose Goetz & Mendelsohn
*Attorney(s) for Petitioner*
*Office and Post Office Address*
300 Park Avenue
New York, N.Y. 10022

*Strike out if inapplicable

B 207B--Original Notice of Petition — Summary Proceedings. b
Non-Payment: Business.

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

Civil Court of the City of New York,
County of NEW YORK

60414 - 1966

Index No. L & T
50504-1966

38 Park Row Corp.
~~xxxxxxxxxxxxxx~~ 119 W. 40th Street *Petitioner, Landlord Address*
New York, New York

*against*

CORE - Congress of Racial
Equality, Inc. *Respondent, Tenant Address*
38 Park Row
New York, New York

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

*NOTICE OF PETITION*
*TO RECOVER*
*POSSESSION OF*
*REAL PROPERTY*
*Non-Payment*
*(Business)*

To CORE - Congress of Racial Equality, Inc.

~~and~~ the respondent tenant ~~the respondent undertenant,~~
above named and described, in possession or claiming possession of premises hereinafter designated and described:
**The basement in building and premises known as No 38 Park Row, New York, New York**

Greeting: You are hereby required forthwith to remove from the premises designated and described as follows, to wit: ~~the~~ ~~on the~~ ~~floor,~~ **the basement** ~~side~~ in building and premises known as Number 38 Park Row ~~Ave., Street,~~ Borough of Manhattan City of New York, or show cause at the Civil Court of the City of New York, County of New York

before the Clerk of said court at his office at 111 Centre Street in the Borough of Manhattan, in the City of New York, within FIVE DAYS after the service of this notice of petition, why the possession of said premises should not be awarded and delivered to the said petitioner.

TAKE NOTICE that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that demand is made in the petition herein for judgment against you, the respondent tenant for the sum of $ **100** with interest thereon from June 1 1966.

In the event of your failure to appear or answer, final judgment by default may be made and entered against you for the relief demanded in the petition.

*(continued below)

*Dated, New York City, the day of* July 7 19 66

/s/ JOHN B. McINERNEY
*Clerk*

**(READ CAREFULLY)**

To the above named Respondent Tenant:

TAKE NOTICE that, if the premises designated in the foregoing notice of petition are occupied by you for BUSINESS PURPOSES, and you file no answer with the clerk WITHIN FIVE DAYS after service hereof on you, the issuing of a WARRANT, DISPOSSESSING you from said premises will be STAYED without application to the Court until TEN DAYS AFTER SERVICE OF THESE PAPERS upon you.

/s/ JOHN B McINERNEY
*Clerk*

TAKE FURTHER NOTICE that you are required to answer before the Clerk of this Court within five (5) days after service upon you of the Notice of Petition and Petition herein.

TAKE FURTHER NOTICE that if you answer, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination. If you fail to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of a warrant for a period of not to exc ten days from the date of servic .

B 206B—Original Petition, Non-Payment
Business: Summary Proceedings: Civil Court. 9-63
*Prepare 1 original. Use corresponding side of form No. B206BC for carbon copies.*

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

**Civil Court of the City of New York,**
**County of** NEW YORK

60415 - 1966
Index No. L & T
~~49550~~ ~~1966~~

38 Park Row Corporation
**119 W. 40th Street**
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial
Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

*~~Respondent, Undertenant Address~~*

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

*PETITION TO RECOVER POSSESSION OF REAL PROPERTY*
*Non-Payment*
*Business*

The petition of 38 Park Row Corp. respectfully shows that:

1. Petitioner is
*~~authorized to institute and maintain this proceeding and is the agent in respect to the premises hereinafter described of~~ the owner and landlord of the premises hereinafter described.

2. Respondent
is the tenant of said premises who entered in possession thereof under **a written** rental agreement made on or about the **18th** day of **May** 19**62** between respondent and petitioner's predecessor in interest ~~the landlord~~, wherein respondent promised to pay to the landlord as rent $ 1041.67 each month in advance on the **First** day of each month.
~~Respondent~~
~~is the undertenant of the aforesaid respondent tenant.~~

3. Respondents is ~~are~~ now in possession of said premises.

4. The premises from which removal is sought were rented for business purposes and are described and designated as follows: ~~the~~ ~~on the~~ ~~floor,~~ **Rooms 312-320** ~~side~~ in building and premises known as No. 38 Park Row, New York, New York which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York

5. That by virtue of the aforesaid agreement there was due and owing by respondent tenant to landlord as and for rent the amount appearing opposite each month set forth below, the rent being due and payable on the First day of each of said months.

| month | rent due | month | rent due | month | rent due |
|---|---|---|---|---|---|
| June 1966 | $ 1041.67 | 19 | $ | 19 | $ |
| July 1966 | 1041.67 | 19 | | 19 | |
| 19 | | 19 | | 19 | |
| 19 | | 19 | | 19 | |

Respondent tenant has defaulted in the payments thereof and the total rent in arrears is $ **2,083.34**.

6. That said rent has been duly demanded personally from the tenant since the same became due.

7. Respondents hold over and continue in possession of the premises without permission of the landlord after default in the payment of the rent as aforesaid.

Petitioner lacks written information or notice of any address where the respondent tenant—resides—is employed—has a place of business ~~has its principal office—place of business in~~ the State of New York, other than the address of the property sought to be recovered.

~~The landlord has furnished respondent tenant with an accurate statement of the amount of his emergency rent.~~
~~(a) That the rent charged is not greater than the emergency rent fixed for such space~~
~~(b) Or that the rent charged has been fixed by arbitration or by the Supreme Court~~
~~(c) And that the services furnished by the landlord have not been unreasonably diminished since the effective date of the existing lease or tenancy.~~
~~That the premises are not subject to the provisions of the Emergency Commercial-Business Space Control Law as amended, by reason of~~

Your petitioner respectfully requests: that a final judgment be made awarding to the petitioner-landlord the possession of the premises and that a warrant issue to remove the respondents from the possession of the premises; a judgment for rent in arrears against respondent tenant for the sum of $ **2,083.34** with interest from June 1 1966; the costs and disbursements of this proceeding.

Dated: New York City
July 1, 1966

38 Park Row Corp.
By: Harold Regenbogen *Petitioner*
The name signed must be printed beneath
Harold Regenbogen - Ass't Secretary

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Harold Regenbogen being duly sworn deposes and says that deponent ~~is the petitioner in the foregoing petition and~~ has ~~heard~~ read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

~~*That deponent is the agent of said Landlord and all the material allegations set forth in said Petition are within the personal knowledge of deponent as agent for said Landlord for which reason this verification is made by this deponent and not by said Landlord.*~~ *~~That the reason this verification is not made by the petitioner in person~~ is that the petitioner is a domestic corporation and your deponent is an officer thereof to wit its* Assistant Secretary *and that the information above stated is from the books and records of the corporation.*

Sworn to before me this 1st day of July 1966.

Stephen Seldin
STEPHEN SELDIN
Notary Public, State of New York
No. 24-8913750 Qual. in Kings Co.
Cert. filed in New York County
Commission Expires March 30, 1968

Harold Regenbogen
The name signed must be printed beneath
Harold Regenbogen

Proskauer Rose Goetz & Mendelsohn
*Attorney(s) for Petitioner*
*Office and Post Office Address*
300 Park Avenue
New York, N.Y. 10022

*Strike out if inapplicable

B 207B—Original Notice of Petition — Summary Proceedings. Non-Payment: Business. b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

Civil Court of the City of New York,
County of NEW YORK

Index No. L & T ~~49550 1966~~ 60415 - 1966

38 Park Row Corp ~~xxxxxxxxxxxxxxxxxx~~ 119 W. 40th St.
148 Madison Avenue
New York, New York
*Petitioner, Landlord Address*

*against*

CORE - Congress of Racial Equality, Inc.
38 Park Row
New York, New York
*Respondent, Tenant Address*

~~*Respondent, Undertenant Address*~~

~~*First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, Person intended being in possession of the premises herein described*~~

*NOTICE OF PETITION*

*TO RECOVER POSSESSION OF REAL PROPERTY*

*Non-Payment (Business)*

To CORE - Congress of Racial Equality, Inc. the respondent tenant ~~and~~ ~~the respondent undertenant,~~ above named and described, in possession or claiming possession of premises hereinafter designated and described:

**Rooms 312-320 in building and premises known as No. 38 Park Row, New York, New York**

**Greeting:** You are hereby required forthwith to remove from the premises designated and described as follows, to wit: ~~the~~ ~~on the~~ ~~floor,~~ **Rooms 312-320** ~~side~~ in building and premises known as Number 38 Park Row ~~Ave., Street,~~ Borough of Manhattan City of New York, or show cause at the Civil Court of the City of New York, County of New York

before the Clerk of said court at his office at 111 Centre Street in the Borough of Manhattan, in the City of New York, within FIVE DAYS after the service of this notice of petition, why the possession of said premises should not be awarded and delivered to the said petitioner.

TAKE NOTICE that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Take notice that demand is made in the petition herein for judgment against you, the respondent tenant for the sum of $ 2,083.34 with interest thereon from June 1 1966.

In the event of your failure to appear or answer, final judgment by default may be made and entered against you for the relief demanded in the petition.

*(continued below)

*Dated, New York City, the day of* July 7 19 66

(s) JOHN B. McINERNEY
*Clerk*

**(READ CAREFULLY)**

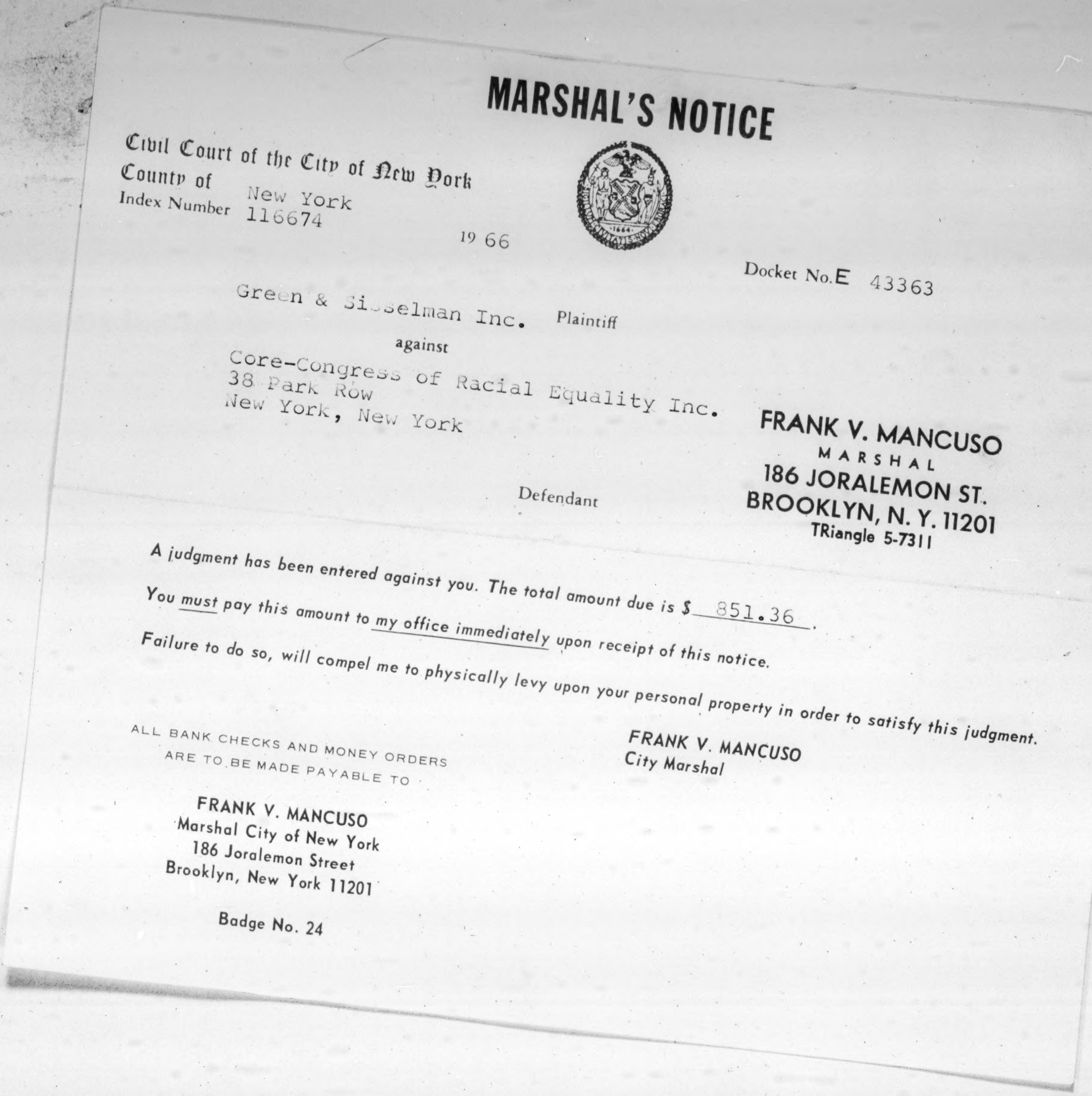
To the above named Respondent Tenant:

TAKE NOTICE that, if the premises designated in the foregoing notice of petition are occupied by you for BUSINESS PURPOSES, and you file no answer with the clerk WITHIN FIVE DAYS after service hereof on you, the issuing of a WARRANT, DISPOSSESSING you from said premises will be STAYED without application to the Court until TEN DAYS AFTER SERVICE OF THESE PAPERS upon you.

(s) JOHN B. McINERNEY
*Clerk*

TAKE FURTHER NOTICE that you are required to answer before the Clerk of this Court within five (5) days after service upon you of the Notice of Petition and Petition herein.

TAKE FURTHER NOTICE that if you answer, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination. If you fail to answer within five days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of a warrant for a period of not to exceed ten days from the date of service.



# MARSHAL'S NOTICE

Civil Court of the City of New York
County of New York
Index Number 116674 19 66

Docket No. E 43363

Green & Sisselman Inc. Plaintiff

against

Core-Congress of Racial Equality Inc.
38 Park Row
New York, New York

Defendant

**FRANK V. MANCUSO**
MARSHAL
186 JORALEMON ST.
BROOKLYN, N. Y. 11201
TRiangle 5-7311

A judgment has been entered against you. The total amount due is $ 851.36 .

You must pay this amount to my office immediately upon receipt of this notice.

Failure to do so, will compel me to physically levy upon your personal property in order to satisfy this judgment.

FRANK V. MANCUSO
City Marshal

ALL BANK CHECKS AND MONEY ORDERS
ARE TO BE MADE PAYABLE TO

**FRANK V. MANCUSO**
Marshal City of New York
186 Joralemon Street
Brooklyn, New York 11201

Badge No. 24

HARRELL, MINNIE et al. VS. SHAPIRO, BERNARD et al WELFARE COMM. of CONNECTICUT 1968
(WELFARE RESIDENCY CASES)

Box
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rical Society Of Wisconsin

Please Retain Original Order

Steve'

This is residency case

CR

March 4, 1968

Hon. Robert K. Killian
Attorney General
30 Trinity Street
Hartford, Conn.

Re: Shapiro v. Thompson
U.S. Supreme Court, No. 813

Dear Sir:

The American Jewish Congress, the National Council of Churches and the Scholarship, Education & Defense Fund for Racial Equality Inc. believe that the above entitled case raises important issues with which they are concerned. Hence, they wish to submit an amicus curiae brief in support of respondent's position. I am therefore writing to request your consent to the submission of such brief.

Yours sincerely,

Joseph B. Robison

cc:
Francis J. MacGregor
Assistant Attorney General
99 Meadow Street
East Hartford, Conn.

bcc:
Carl Rachlin
Scholarship Fund etc.

John McDowell
National Council of Churches

Steve

280-4112

March 11, 1968

Lester Greenberg
Staff Counsel
American Jewish Congress, Stephen
Wise Congress House
15 East 84th Street
New York, N. Y. 10028

Dear Lester:

The Connecticut brief is enclosed--thanks for the Appendix.

My Baltimore representative of NASW has been in touch with Dr. Raymond Gould, so everything should be straightened out there shortly.

We also have the California amicus brief--let me know if you want that.

Steve Nagler spoke to me about your wanting some other material. Let me know.

Cordially,

Henry A. Freedman

Enclosure
cc: Stephen Nagler, Esq.
HAF:ct

March 15, 1968

To: Joseph B. Robison
cc: Carl Rachlin
Steve Nagler

From: Lester Greenberg

Subject: Amicus Brief - Residency Cases

Steve Nagler has agreed to find out what date our brief is due. He will also send me a copy of the more recent article supplementing Mollie Orshansky's analysis and description of who the poor are.

I have agreed to write letters for consent to file in the two additional cases. Permission will be asked on behalf of the American Jewish Congress, Scholarship, Education and Defense Fund for Racial Equality, Inc. and the National Council of Churches. The letters will not be sent until I hear from Steve or Carl who the other *amici* will be. The one additional *amicus* party we want to get is the Catholic Bishops.

The following is a tentative outline of the brief:

I. *There is a Federal right of public assistance.*

A. *Statutory*. The Federal Government enacted the present welfare laws because it did not want people to starve.

B. One may go further and argue that the due process clause of the Fourteenth Amendment provides a constitutional right, especially for children, to the minimal assistance necessary for subsistence. (Point I to be written by Lester Greenberg.)

II. *Whether welfare benefits are a given right or privilege, exclusion from such benefits to those who fail to meet the one year residency requirement is arbitrary and therefore unconstitutional.*

A. *Exclusion cannot be justified on the grounds that recent arrivals to a state were not part of the group to be benefitted by the Welfare Act.*

B. There is no overriding interest that justifies the exclusion of recent arrivals. (The alleged overriding purpose is to keep welfare recipients from shopping from state to state for the best benefits.)

1. Children make up the vast majority of those receiving AFDC benefits and they do not enter a state to obtain higher benefits.

2. People travel to a state for other reasons.

3. Even if a lot travel for this reason, shot gun too irrational.

III. Right to Travel

A. Commerce Clause. Inhibits workers to enter state to get jobs.

B. Privileges and Immunities-Article IV. Federal citizenship includes right to travel to any state. Receipt of benefits under welfare cannot be conditioned upon failure to exercise this constitutional right.

C. Privileges and Immunities-Fourteenth Amendment. As a citizen of the state, he is entitlted to the welfare benefits provided by the state and entitled to entry to the state for the purpose of becoming a citizen.

D. Due Process. There is a long history of regarding the poor as being inferior to other citizens and denying to them the right to travel as part of a pattern of discriminatory legislation.

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BENNETT YANOWITZ

March 18, 1968

Dear Steve:

You absolutely must read Unconstitutional Conditions: Welfare Benefits with Strings Attached by Robert M. O'Neil, 54 California Law Review, 443 (1966). Especially page 470 et. al.

When do I get the article supplementing Molly Orshanky's description of who the poor are?

Cordially,

Les

Lester Greenberg

LG:kag

P.S. How would you like to trade points I & II. Can I cite anything besides Reich?

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Les
Lester Greenberg

LG:kag

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April 1, 1968

Hon. Robert K. Killian
Attorney General
30 Trinity Street
Hartford, Conn. 06103

Re: Shapiro v. Thompson

Dear Mr. Killian:

The American Jewish Congress, National Council of the Churches of Christ in the U.S.A., National Conference of Catholic Charities, Council of Jewish Federations and Welfare Funds and Scholarship Education Defense Fund for Racial Equality request permission to join in filing a single joint brief amicus curiae in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

cc: John McDowell, Esq.
Carl Rachlin, Esq.
Bill Polking, Esq.
David Turteltaub, Esq.

April 1, 1968

Laurens H. Silver, Esq.
Neighborhood Legal Services Project
416 5th Street, N. W.
Washington, D. C. 20001

Re: ***Harrell v. Tobriner***

Dear Mr. Silver:

The American Jewish Congress, National Council of the Churches of Christ in the U.S.A., National Conference of Catholic Charities, Council of Jewish Federations and Welfare Funds and Scholarship Education Defense Fund for Racial Equality request permission to join in filing a single joint brief *amicus curiae* in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

cc: John McDowell, Esq., National Council of Churches, 475 Riverside Dr.
Bill Polking, Esq., National Conference of Catholic Charities, 1346 Connecticut Ave., N.W., Washington, D. C. 20036
David Turteltaub, Esq., Council of Jewish Federations and Welfare Funds, 315 Park Avenue South, N.Y.C.
Carl Rachlin, Scholarship Education Defense Fund for Racial Equality, 164 Madison Avenue, N.Y.C.

April 1, 1968

Charles T. Duncan, Esq.
Corporation Counsel, D. C.
District Building
Washington, D. C. 20004

Re: Harrell v. Tobriner

Dear Mr. Duncan:

The American Jewish Congress, National Council of the Churches of Christ in the U.S.A., National Conference of Catholic Charities, Council of Jewish Federations and Welfare Funds and Scholarship Education Defense Fund for Racial Equality request permission to join in filing a single joint brief amicus curiae in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

cc: John McDowell, Esq. ✓
Carl Rachlin, Esq. ✓
Bill Polking, Esq.
David Turteltaub, Esq.

April 1, 1968

Charles T. Duncan, Esq.
Corporation Counsel, D. C.
District Building
Washington, D. C. 20004

Re: Harrell v. Tobriner

Dear Mr. Duncan:

The American Jewish Congress, National Council of the Churches of Christ in the U.S.A., National Conference of Catholic Charities, Council of Jewish Federations and Welfare Funds and Scholarship Education Defense Fund for Racial Equality request permission to join in filing a single joint brief amicus curiae in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

cc: John McDowell, Esq. ✓
Carl Rachlin, Esq. ✓
Bill Polking, Esq.
David Turteltaub, Esq.

April 1, 1968

Thomas K. Gilhool, Esq.
Community Legal Services, Inc.
313 So. Juniper Street
Philadelphia, Pa. 19107

Re: Reynolds v. Smith

Dear Mr. Gilhool:

The American Jewish Congress, National Council of the Churches of Christ in the U.S.A., National Conference of Catholic Charities, Council of Jewish Federations and Welfare Funds and Scholarship Education Defense Fund for Racial Equality request permission to join in filing a single joint brief *amicus curiae* in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

cc: John McDowell, Esq.
Carl Rachlin, Esq.
Bill Polking, Esq.
David Turteltaub, Esq.

April 1, 1968

Brian L. Hollander, Esq.
Dayberry & Howard
1 Constitution Plaza
Hartford, Conn. 06103

Re: Shapiro v. Thompson

Dear Mr. Hollander:

The American Jewish Congress, National Council of the Churches of Christ in the U.S.A., National Conference of Catholic Charities, Education Defense Fund for Racial Equality request permission to join in filing a single joint brief *amicus curiae* in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

cc: John McDowell, Esq.
Carl Rachlin, Esq.
Bill Polking, Esq.
David Turteltaub, Esq.

April 1, 1968

Mr. Edgar R. Casper
Deputy Attorney General
Room 238
Harrisburg, Pa. 17120

Re: Reynolds v. Smith

Dear Mr. Casper:

The American Jewish Congress, National Council of the Churches Council of Jewish Federations and Welfare [illegible] Catholic Charities, Education Defense Fund for Racial Equality request permission to join in filing a single joint brief amicus curiae in the above-captioned case, dealing with the constitutionality of residency requirements for welfare payments. The same request is being made of counsel for the other side.

Yours truly,

Joseph B. Robison

April 16

The Scholarship, Education and Defense Fund for Racial Equality, Inc., (SEDFRE) is an independent national organization formed in 1962 to assist local community organizations and civil rights groups.

SEDFRE services include scholarship assistance, specialized legal action, information activities on welfare and related government assistance. These programs help to stimulate and encourage local leadership and to give it support that is not available elsewhere.

SEDFRE helps disenfranchised and deprived Negroes and poor whites to meet needs ranging from voting rights and improved schools to street lights and paved streets. SEDFRE also seeks better ways to acquaint welfare clients with their rights under the law, and encourages them to take the necessary steps to make sure that their rights are respected.

COPY

*Memorandum from...* AMERICAN JEWISH CONGRESS
15 East 84th St., New York, N. Y. 10028 • TR 9-4500

April 23, 1968

To: Mr. David Turteltaub
Council of Jewish Federations and Welfare Funds, Inc.

Mr. John McDowell
National Council of the Churches of Christ in the U.S.A.

William G. Polking, Esq.
National Conference of Catholic Charities

Carl Rachlin, Esq.
Scholarship, Education and Defense Fund for
Racial Equality, Inc.

From: Joseph B. Robison

Subject: Shapiro v. Thompson, et al.

I am enclosing one printed copy of our brief amici curiae in the above-captioned case and am sending four additional copies under separate cover.

Within a few weeks we will have mimeographed the brief. Please let me know how many copies you want.

If you want additional printed copies, we can order 100 copies for $238. The price per copy is reduced if more copies are ordered. Since the printer can only hold the type for a few days, please let me know promptly if you want extra printed copies.

We look forward to working with you on other briefs in the future.

Encl.

Welfare
residency
Conn

April 24, 1968

Professor Edward V. Sparer
Yale University Law School
New Haven, Conn. 06520

Dear Ed:

At the suggestion of Carl Rachlin, I enclose a copy of our brief in the three residency requirement cases.

I have caught three trout that were trespassing on your property. I hope to see you up there soon.

Best regards.

Yours sincerely,

Joseph B. Robison

Encl.

cc: Carl Rachlin, Esq.

April 25, 1968

Samuel Felder, Esq.
Director
Bureau of Resources and Legal Services
Department of Social Services
City of New York
241 Church Street
New York, N. Y.

Dear Mr. Felder:

Enclosed with our compliments, is a copy of our "amicus" brief in the welfare-residency-law cases now pending before the Supreme Court. Your comments would be greatly appreciated.

Frequently, statistical materials would be helpful in the preparation of such briefs. Are New York City statistics readily available? In my case, I look forward to hearing your suggestions.

Very truly yours,

Stephen M. Nagler

SN:cb

bcc: Mr. Lou Levitt

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September 20, 1968

Carl Rachlin, Esq.
164 Madison Avenue
New York, New York 10016

Dear Mr. Rachlin:

Enclosed is a copy of a supplemental brief filed recently by the appellees in the three welfare residence cases pending in the Supreme Court. The cases have been calendared for reargument on October 23, 1968.

Sincerely,

Peter Smith

PS/avb

Enclosure

FROM THE DESK OF
JACKIE TURNER

4/16/68

Carl

Attached is statement sent to Joe Robison for inclusion in legal brief being done by the Congress. He and Marvin talked by phone, so Marvin did some editing & this is completed copy.

---

1. — Because this is a benefit under national law (even though state involvement) is it a rt of national citizenship ~~it~~ upon which the rt to travel may not be limited

2 — Voting rt is important but it is not constitutionally equivalent to the rt to live

needs of the poor is reflected in the request of the Committee for Trade and Foreign Plantations of the English Privy Council in 1680 for information as to provisions made in Connecticut for "relieving poor, decayed and impotent persons." Capen, Historical Development of the Poor Law of Connecticut, (Columbia U. Press, 1905) at 22.

3. The American Antecedents

A history of the reception of the English poor law into the thirteen original colonies, particularly with regard to government obligation to provide for the poor and the law of settlement is set forth ~~in~~ by Riesenfeld~~'s~~. Op cit. supra ~~"The Formative Era of American Public Assistance Law"~~ (Id./at 203 et seq.). The early laws of the Massachusetts Bay Colony and New Plymouth clearly imposed the obligation on government officials (Id. at 204, 206, 208).

A detailed history of the development of the poor law in Connecticut is obtained in Capen, Historical Developement of the Poor Law of Connecticut (Columbia University Press (1905). See also Riesenfeld, supra, at 209, 212, 226, 228). As early as 1640, the colony of New Haven had provided for its poor (Capen, op. cit. supra at 22-23). The two colonies of Connecticut and New Haven had been united in 1665. In 1673, the general court ordered as follows:

> . . . .Every town within this colony, shall maintain their own poor. . . . If any person come to live in any town in this government, and be there received and entertained three months, if by sickness, lameness or the like, he comes to want relief; he shall be provided by that town wherein he was so long entertained, and shall be reputed their proper charge, unless such person has within the said three months been warned by the constable, or some one or more of the selectmen of that town, not there to abide without leave first obtained of the town, and certify the same to the next court of assistants who shall otherwise order the charge arising about him according to justice. (Capen, supra, at 29-30, referring to Law No. 57 of 1673.) _/

_/ For developments in Pennsylvania, see Beitel, Treatise on the Poor Laws of Pennsylvania (T. & J.W. Thompson & Co., Pa., (1899)); Heffner, History of Poor Relief Legislation in Pennsylvania, 1682-1913, Holzpfel Publishing Co. (1913).

Greenberg

## I. CHILDREN HAVE A RIGHT NOT TO STARVE, AND RESIDENCY REQUIREMENTS WHICH ACT SO AS TO DEPRIVE THEM OF THE NECESSITIES OF LIFE ARE UNCONSTITUTIONAL.

### The Religious Imperative to Provide for the Poor

The obligation of society to provide for its poor is clearly articulated in the Old Testament.

The New Testament also emphasizes this obligation:

For four hundred years this obligation has been recognized by Anglo-American law as an obligation of temporal government.

Later

Living in an age of unprecedented material wealth and in a society which gives priority to the needs of the individual, due process must now be regarded as allowing the individual incapable of providing himself with the necessities of life to get the necessities from government as a matter of right. In short, there is a right not to starve which must implicitly limit the application of residency requirements.

out

## The Historic Obligation of Government to Provide the Necessities of Life to Those Having No Other Means to Obtain Them.

In Powell v. Alabama, 287 U. S. 45 (1932) this Court said:

Out

> One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence, subject, however, to the qualification that they be shown not to have been unsuited to the civil and political condition of our ancestors by having been followed in this country after it became a nation.

It is particularly important to examine the English law on the subject because the American laws for relief of the poor ~~bear a particularly strong imprint from~~ were shaped by their English antecedents. Professor Stefan A. Riesenfeld states:

> It is probably to the everlasting credit of the lawmaker of the Tudor period that they not only laid the cornerstone for the protection of civil rights but also enacted the legal foundations for the development of public assistance to the needy. Their methods were readily transplanted into the American colonies and thus formed the basis of domestic public assistance acts. The details of this process can be fully appreciated only after a study of the state of the English poor law on the eve of the American colonization and its development during the first part of the seventeenth century. (The Formative Era of American Public Assistance Law, 43 Calif. L. Rev. 175, 177 (1955)).

In 1572 the English parliament passed a law (14 Elizabeth c. 5) which was a landmark in the development of the Poor law. It was the first national legislation which established as a principle of English ~~temporal~~ law that the poor must be provided for with money raised by public taxation. (~~For~~ For the earlier English evolution toward this ~~concept~~ landmark legislation, see Reisenfeld ibid at 180 et seq.). This law was added to and made more systematic in 1597 (39 Elizabeth c. 3) and again in 1601 (43 Elizabeth c. 2). It is not necessary to trace the changes that occurred in the three versions since it was the last version, the Elizabethan Act of 1601 for the Relief of the Poor which affects our present system of relief. It was this law of public assistance which existed at the beginning of American colonization and throughout colonial days.

Professor Jacobus tenBroeck says of this law that it

our

> fixed the character of poor relief for three centuries not only in England but in America as well. Today its principal features linger in the welfare programs of all~~egd~~ states. (California's Dual System of Family Law: Its Origin, Development, and Present Status," Part I, 16 Stanford L. Rev. 257, 258 (1964).

At the very core of this law was the legal responsibility to provide for the poor. / Professor tenBroeck describes its fundamental character as follows:

> The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public, and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide. (Ibid. 262)

The principal section of 43 Eliz. c. 2 provided:

> That the churchwardens of every parish, and four ... substantial householders there ... shall be called overseers of the poor of the same parish; and they ... shall take order from time to time, by and with the consent of two or more ... justices of peace ... for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise ... (by taxation of every inhabitant ... and of every occupier of lands, houses ... or saleable underwoods in the same parish ...) a convenient stock of flax, hemp, wool, thread, iron or other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, importent, old, blind, and such others among them, being poor and not able to work, and also for the putting out of such children to be apprentices .... (As modernized by Professor Risenfeld, ibid. at 178).

Although at that time the separation of powers as we know it had not developed the justices of the peace embryonic judicial officers, had the ultimate local responsibility for implementation of the poor relief. ~~And,~~ The law provided

> any person who found himself aggrieved by any tax or other act of the churchwardens or overseers could appeal to the justices of the peace who were authorized at their general quarter sessions to dispose of the matter "as to them shall be thought convenient,"*** their order being conclusive and binding all parties. (Underscoring added.) (tenBroeck, ibid 262 citing 43 Eliz. 1 c. § 4 (1601).

The explicit obligation of government to provide relief to each needy person and the role of the judiciary in providing that relief is reflected in Gilbert's Act of 1782, summarized as follows:

> ... Any applicant who could not get employment in the ordinary way should by the Poor Law Guardians -- without explaining how -- be provided with it and be fed and lodged until it could be given. Failing such relief, any justice of the peace was expressly empowered, after inquiry upon oath, to order "some weekly or other relief" (~~S. and B. Webb, ibid~~ at 171).

The extent of judicial involvement is set forth at length in S. & B. Webb, English Local Government, English Poor Law History, Vol. 1, Longmans Green and Co., Ltd. (1927), pp. 66-78.

in the Webb book at pages

~~But~~ From the beginning the good was inextricably mixed with the bad. While public responsibility to provide direct relief for those unable to work was acknowledged, relief was provided at the parish level/through local taxes for local poor. Local administration, then probably a necessity given the difficulties of communication and transportation and the limited manpower of the central government, dictated the development of the settlement laws, the direct antecedents to residency requirements.

Professor tenBroeck notes:

> The statute did not make the nation a single welfare state. It did not create a nationally financed and nationally administered welfare system, make available a national subsidy to localities with inadequate resources to meet the local need, or provide a method of channeling resources from the wealthier localities to the poorer or those in greatest need. The nation did not even set the standards or amount of assistance or define need. It did not levy the tax, prescribe its condition, or order its relationships to other taxes or expenditures. These were to be determined by local officials, and the largest unit over which the burden might be spread was the county or the town, not the nation. "/I/f the saide Justices of the Peace doe perceive that the Inhabitance of any Parishe are not able to levie amonge themselves sufficient Summes of Money for the Purposes," then they "shall and may taxe rate and assesse" other parishes in the hundred for the sake of the poor parishes, "and if the saide Hundred shall not be thoughte to the saide Justices able and fitt to releive the ... severall Parishes not able to provide for themselves," then the justices "shall rate and assesse" any other parish "within the ... County ... as in their discretion shall seeme fitt." (Id. at 263)

Residency requirements inevitably resulted from the fact that the Elizabethan poor law depended on local administration and exclusive local ~~plannin~~ financing.

> Direct local administration and exclusive local financing became then and has remained part of the Elizabethan poor law system. One immediate and long-range consequence of this distribution of authority, administration, and cost was that great reliance was placed on settlement and removal provisions. These served to identify the community responsible for providing support in each case and to keep down relief expenditures. Only those who had been born in a community or had long lived there were eligible. Other poor persons were kept out or removed to the place of their settlement. The size of the taxing

> and paying unit thus was determinative. From the community's point of view, he was bound to the place of his misfortune, restricted in his free movement and his personal opportunity. From society's point of view, the economy was fragmented, rendering more difficult the solution of economic problems that were regional and national. All of this is true today. (Id 565).

The effects of having ~~the community as a whole legally obligated~~ a national program of welfare administered by local public government and in part financed by local taxes ~~to provide for the relief of poverty~~ are with us today. Professor Riesenfeld characterizes the Elizabethan poor law received into the colonies as follows:

> The essential feature of the Elizabethan poor law was the Principle of Local Responsibility" as safeguarded by two corrolaries: the "Principle of Settlement and Removal and the "Principle of Primary Family Responsibility." This trinity influenced colonial development profoundly....(Ibid 178).

~~And Professor tenBroeck says:~~ -

> ~~The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public, and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide. (Ibid., at 262.)~~

Given the local administration provided for administering poor relief, the change from ~~feudalism~~ a feudalistic manorial system with serfs to an industrial society with landless poor which continued through this period, the cheapness of human life and the limited resources of the kingdom, it is not strange that in fact the government obligation to meet the minimal needs of the poor was honored more in the breach than otherwise. However, the principle of government duty to provide for the poor was so firmly implanted that, towards the end of the 18th century, Blackstone stated in his Commentaries:

> The law not only regards life and liberty and protects every man in the enjoyment of them, but also furnishes him with everything necessary for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of

> the community, by means of the several statutes enacted for the relief of the poor. (Page 95, American Editions of J. B. Lippincott & Co. from the 19 London Edition, Page 131, 12th ed., London, 1793.)

Thus, the converse of the obligation of government to provide for the poor, the right of the individual to demand such relief as his due was articulated as a fundamental principle of law before 1800. This statement appears in Book~~s~~ I entitled "Of the Rights of Persons" in Chapter 1, which is entitled "Of the Absolute Rights of Individuals":

A history of the reception of the English poor law into the thirteen original colonies, particularly with regard to government obligation to provide for the poor and the law of settlement is set forth in Riesenfeld's "The Formative Era of American Public Assistance Law" (ibid., 203 et seq.).

Massachusetts Bay passed the first specific law dealing with poor relief and settlement providing:

> ... that the court, or any two magistrates out of court, shall have the power to determine all differences about a lawful settling and providing for poor persons, and shall have power to dispose of all unsettled persons into such towns as they shall judge to be most fit for the maintenance of such persons and families and the most ease of the country. (1 Massachusetts Bay Recs. 264 (Shurtleff ed. 1853), as cited in Riesenfeld at 206.)

No~~te that~~ As in England the courts were responsible for implementing the law and providing for the poor. Riesenfeld states:

> The records of the Court of Assistants and the courts of inferior jurisdiction as well as the records of the various Massachusetts towns help to complete the picture presented by the legislative history. For the very early days of the colony we have some relief orders issued by the Court of Assistants itself. [(Id. at 208). As an example citing 2 Records of the Court of Assistants of the Colony of Massachusetts Bay, 1630-1644, 92, 97, 102, 199 (Noble ed. 1904) and gives, the following example: It was ordered that Alexander Beck should have 24 bushels of corn for Mary Joanes for the time past and for the time to come a bushel of corn a week and to have two blankets and a rug to keep her warm.]

A more comprehensive enactment incorporating the concept of government responsibility for poor relief was adopted by New Plymouth in 1642, not absorbed into Massachusetts Bay until 49 years later. The law's two main provisions provided:

> That every township shall make competent provision for the maintenance of their poor according as they shall find most convenient and suitable for themselves by an order and general agreement in a public town meeting,

and

?

> That every person that lives and is quietly settled in any township and not excepted against within the compass of three months after his coming, in this case shall be reputed an inhabitant of that place. (Compact, Charter and Laws of the Colony of New Plymouth 171 (Brigham ed. 1836); 11 Plymouth Colony Recs. 40, 41 (Pulsifer ed. 1860) as cited in Riesenfeld, at 204.

Connecticut, which followed Massachusetts Bay's lead in specifi~~xxkky~~cally adopting legislation acknowledging the responsibility to provide for the poor is discussed in Riesenfeld, at pp. 209=212 and 226-228.

Connecticut's major law revision of 1750 strengthened the concept of government responsibility to provide poor relief.

> Its most important innovation was a broadening of the scope of subsidiary colonial liability. It no longer extended merely to sick persons without settlement in Connecticut but also to insane and apparently all other incapacitated paupers without colonial settlement. Thus the revision of 1750 brought one of the earliest recognitions in American public assistance legislation that all needy persons are entitled to relief. Settlement was no longer a prerequisite for relief but determined only the ultimate allocation of the burden. (Id., 227-228, citing Acts and Laws of His Majesty's Colony of Connecticut 1750, 91 ff., 99 ff., 190 ff., 225 ff.).

A detailed history of the development of the poor law in Connecticut is contained in Capen, Historical Development of the Poor Law of Connecticut (Columbia University Press (1905)). no ¶

no ¶ As early as 1640, the colony of New Haven had provided for its poor (ibid at 22-23). The two colonies of Connecticut and New Haven had been united in 1665. In 1673, the general court had ordered as follows:

> . . . . Every town within this colony, shall maintain their own poor. . . . If any person come to live in any town in this government, and be there received and entertained three months, if by sickness, lameness or the like, he comes to want relief; he shall be provided by that town wherein he was so long entertained, and shall be reputed their proper charge, unless such person has within the said three months been warned by the constable, or some one or more of the selectmen of that town, not there to abide without leave first obtained of the town, and certify the same to the next court of assistants who shall otherwise order the charge arising about him according to

justice. (Capen, ibid at 29-30, referring to Law No. 57 of 1673.)

Clear statements as to the public responsibility for the poor are difficult to find because, as this Connecticut law indicates, the principle was so fundamental as to be implicitly accepted. All conscious attention and energy was directed to the ~~terrible~~ problems of settlement. Because, as in England, the colony-wide ~~inextricably tied to the concept of meeting the~~ obligation of relief was met through local taxes levied by each community to provide for ~~each community's~~ its own poor. ~~As in England all attention was devoted towards creating a law of settlement which would protect local taxpayers and local government from supporting the poor from other areas.~~

out?

An indication of the importance England attached to the responsibility of colonial government ~~for~~ to provid~~ing~~e for the poor is reflected in the request of the Committee for Trade and Foreign Plantations of the English Privy Council in 1680 for information on provisions made in Connecticut for relieving poor, decayed and impotent persons (id at p. 22)

fix

The history of reception of English poor laws in the State of Pennsylvania is set forth in detail in Beitel, Treatise of the Poor Laws of Pennsylvania (T. & J. W. Thompson & Co., Pa., (1899)) and Heffner, History of Poor Relief Legislation in Pennsylvania, 1682-1913, Holzpfel Publishing Co. (1913)~~; the responsibility to provide for the poor was so fundamental as to be beyond discussion~~. Riesenfeld states that the first comprehensive poor act~~ax~~ of 1705 (Pa. State at Large 1700-1712, 20 (Mitchell and Flanders ed. 1896)) incorporated many sections of the English poor laws including 43 Eliz., c. 2, the famous law of 1601, ibid, at _____. As in Connecticut The county laws concentrated on the problems of settlement since the responsibility of local government to provide relief was explicitly accepted.

Acceptance of the principle of government responsibility to provide for the poor in the other colonies is documented in Riesenfeld.

Move them back to origin?

This public responsibility to support the destitute was also recognized in those states organized west of the Alleghany Mountains. A history of the principle's acceptance in those states is set forth in Abbott, Public Assistance, American Principles and Policies, ~~Ch~~ Vol. I, University of Chicago Press (1940), pp. 3-35. To give only one example, noted at page 5 therein, Kansas acknowledged this government responsibility in its first constitution in 1859 by providing in Article vii, sec. 4 of the constitution as follows:

> The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

Numerous other states had similar provisions.

In summary, ~~Thus,~~ it is clear that England, the American colonies and the states regarded themselves as being legally obligated to provide for the poor. ~~Thus, in 1875,~~ Justice Brewer when he said in 1875 ~~said~~, prior to his elevation to the United States Supreme Court, "The relief of the poor--the care of those who are unable to care for themselves--is among the unquestioned objects of publid duty. In obedience to the impulses of common humanity, it is everywhere so recognized. (State ex rel. Griffith v. Osawkee Twp., 14 Kan. 418, 421 (1875). ~~[cit page citation]~~) ~~He spoke of a principle by then fundamental to the entire country. [illegible]~~ was speaking of a principle by then fundamental to the entire country.

indent single

~~[illegible] CHILDREN HAVE A RIGHT NOT TO STARVE,~~
~~AND RESIDENCY REQUIREMENTS WHICH ACT~~
~~SO AS TO DEPRIVE THEM OF THE NECESSITIES~~
~~OF LIFE ARE UNCONSTITUTIONAL.~~

## AFDC Payments Provide Only Necessities

AFDC payments only provide for the necessities of life. In Connecticut, Vivian Thompson and her two children received $86.65 per month for all expenses except rent (appendix in Connecticut cases, p. 37a). The Connecticut Department of ________________________ estimates that a woman with two children under two years of age needs $________ per month to maintain "________________________________________________________________________."*

[The language used by Connecticut to describe what is provided for in the minimum necessary budget it has developed with citation to document.]

In the Pennsylvania case, Juanita Smith and five minor children would receive at most $__________ per month under the Pennsylvania AFDC program. The Bureau of ______________________, of Pennsylvania, has recommended that a family of that size needs at least $__________

---

* The Connecticut Bureau of __________________________ reaches this figure in the following way:

(Source)

if can't get all the figures will compare am't received to OEO figures per month to provide the necessities of life.*

Similarly, to use one family from the District of Columbia cases, which is a class action, involving several different family groups, Minnie Harrell and her three children would receive $_________ per month under the District of Columbia AFDC payment schedule. The Bureau of ________________, of the District of Columbia, has ascertained that such a family of four needs $___________ per month to provide the necessities of life.**

---

* The Pennsylvania Bureau of ___________________ reaches its projection in the following manner:

**This figure is based on the following computation by the District of Columbia, Bureau of _________________________:

Using the statistics prepared by the states themselves, AFDC payments provide in the best of the three situations only _____% of the money needed to provide the basic necessities of life for the children and adults on whom they depend for maternal care; in the _________________________ and __________________ cases, only ______% and _______% respectively. Conditioning AFDC benefits on compliance with residency requirements results in the loss to these children of fundamental necessities, food needed to stop hunger and prevent vitamin and mineral deficiencies and clothing and shelter necessary to prevent cold and sickness.

### Denial of AFDC Payments May Result in Permanent Physical and Mental Impairment of ~~the~~ Children and Can Even Result in Their Death.

where need exists

AFDC is a last resort. The hardship which regularly results from its denial because of failure to meet residency requirements is aptly illustrated by the desperate situation Minnie Harrell and her three children face (one of the families in the District of Columbia case). Ill with cancer, unable to work, unable to ~~xx~~ continue staying at the small home of her brother (who has a wife and six children he is trying to support on $1.60 per hour as a tire changer), the Child Welfare Division of the Department of Public Welfare of the District of Columbia can only suggest ~~that~~ Minnie Harrell ~~recommends that the children be placed~~ consider placing her children in an orphanage. [If can't get appendix, cite the pp. 1-3 Memorandum in Support of Plaintiff's Motion for Preliminary Injunction, dated June 13, 1967.] ¶ Nowhere in the record of any of the three cases is there any suggestion that denial of AFDC benefits is dependent upon the availability of alternative relief programs for which the rejected AFDC applicants are eligible. no ¶

no ¶ Residency requirements are applied regardless of whether the rejected recipients have any alternative source of support for staying alive. As far as the state is concerned, these people are left to starve to death. If they are fortunate, they may obtain relief from a voluntary charity of an amount the charity feels it can afford. No voluntary organization is required to provide such relief. And when there are no private agencies or no money, people not receiving public relief may actually starve or freeze to death.

Thus, implicit in the defense of these three states to their right to use residency requirements as an absolute bar to AFDC payments, no matter how great the need of the applicant, is the proposition that the state may let children residing within its boundaries die for lack of such necessities as food ~~or~~ and shelter.*

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* Certain states appear to be acting on this the assumption ~~that they are not under legal obligation to keep their children from starving to death.~~ (New York Times, March 25, 1968, p. 47, col. 1, "Hunger and Sickness Affect Mississippi Negro Children"):

(Footnote continued from previous page)

"The baby is suffering from chronic malnutrition compounded by acute dehydration," said Dr. Christian H. Hansen, Jr., of the United States Public Health Service, who was examining the infant.

According to Dr. Hansen, the baby is but one of hundreds of Negro children in the flatlands of northwestern Mississippi who are destined to grow up stunted in body, and perhaps in brain, by the consequences of acute poverty.

....

"A few more hours without medical attention," Dr. Shirley said, "and this baby would have died."

It would hardly have been unusual because the infant mortality rate for Negroes in the northern half of the county is 51.1 for each 1,000 live births. The rate for whites 17 a thousand.

....

The effects of malnutrition may be both long-term and immediate, according to Dr. Leon Kruger, the health center's clinical director. [The health center, called Tufts Delta Health Center is run by Tufts University Medical School in Boston and financed by the Office of Economic Opportunity.]

"There is very good medical evidence that malnutrition in the first year is irreversible," he said. "It affects the children's height and weight and may affect them mentally.

* * *

(New York Post, March 27, 1968, p. 2, col. 1, "Secret Report: 10 Million Go Hungry in U.S."):

On the board are doctors specializing in nutrition, labor and religious leaders, educators, foundation officials and anti-poverty workers.

The co-chairmen are Leslie Dunbar, executive director of the Field Foundation in New York, and Dr. Benjamin E. Mays, retired president of Morehouse College in Atlanta.

....

While much of the board's attention centered on the South, sources familiar with the investigation emphasized that hunger was not solely a Southern problem.

check

It is also evident in most of the big-city ghettos and widespread among Indiana and Mexican-Americans in the southwest, these sources said.

...."BUT WE WILL DOCUMENT IT IN A WAY THAT IS UNEQUIVOCAL," PROMISED ONE MEMBER OF THE BOARD.

### The Obligation to Provide for the Poor Exists. It Must Be Regarded as a Right of the Individual Whose Denial Can Be Challenged Through Due Process.

Bad

Since the Tudor period, the concept of due process has developed remedies to insure adequate protection of the civil rights developed during that period. Unfortunately, the principle of government's responsibility to provide for the poor has not developed equally sophisticated institutions to insure its application. The state of the English law as late as 1927 is summarized by Sydney and Beatrice Webb.

## The Obligation Exists. ~~It Must Be Regarded As a Right of the Individual With Due Process Providing Him With A Remedy.~~

Bad Compare earlier quote

> The English Poor Law at no time gave the destitute a personal "right" to relief, in the sense that a mediaeval copyholder had a right to occupy a piece of land or that a modern old-age pensioner has a right to his pension. What was enacted was not a right at all, but an obligation. The Act of the 43rd of Elizabeth cast upon the parish and its officers, and the Justices of the Peace under whom they acted, the obligation to relieve the impotent poor and to provide the able-bodied with the means of earning their livelihood by work. By this legislation, destitution, however caused, was, in effect, adjudged to be a public nuisance, like muck heaps, or vermin, or vagrants; and this nuisance had to be "abated" in the manner and by the officers prescribed by the law, which was to be enforced by criminal proceedings against officials in default. The applicant for relief could not be a plaintiff in the Law Courts to recover his relief by civil process. (S. ~~and B. Webb~~ ibid at p. 406)

should get English Case

This peculiar situation in which government is obligated to provide the necessities of life but the individual denied such necessities has no remedy is responsible for Blackstone's observation that in providing for "the poor of England ... miserable shifts and lame expedience" have been adopted from time to time (Abbott, ibid. at p. 4).

Bad

Similarly, in this country, the clear obligation of the government to provide for the poor has not been regarded as vesting a right in the individual poor person to compel government to meet its obligation through recourse to the courts.

> The English law has perhaps again influenced our American statutes and their interpretation on this point. In England it has long been an established legal principle that the duty of the local authority to relieve the poor is "a duty owed to the public and not to the poor person himself,"
>
> and that "no action can be brought . . . . by the poor person if relief is refused him, or if an officer is negligent in giving relief." (Abbott, ibid p. 20, citing W. Ivor Jennings, The Poor Law Code (London, 1930), p. lxxvi.) [Should get ~~English~~ american case citation]

The isolation of the obligation of government from the development of corresponding rights and ~~dutix~~ duties has had disastrous results.

## As Clear As the Obligation Is, Government Has Not, Without the Prod of an Individual Remedy, Adequately Responded to the Need.

~~The result has been disastrous.~~

In 1964, there were 34.1 million Americans, of whom almost 15 million were children, whose income was below the poverty line.[*] (Orshansky, "Recounting the Poor - A Five Year Review," Social Security Bulletin, April, 1966, pp. 12, 13.) For these people, each day requires a choice between an adequate diet of the most economical type and some other necessity because there is not enough money for both. Of the 15 million children living below the poverty line in 1964, 5.7 million were under age six. Certainly for them and their 2-3/4 million mothers, jobs by themselves, will not offer a means to a higher standard of living (ibid, p. 12). Similarly, jobs have not been the answer for 6.1 million of the 15 million children who economic status reflects the fact that they live in families in which at least one member is one of the 1½ million men or 165 thousand women who are employed full time all year but do not earn enough to support their children to raise their family's income above the poverty line.

These statistics of children not receiving the necessities of life must be studied in light of the purposes of that part of the

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[*] The poverty line is defined in Orshansky, "Counting the Poor: Another Look at the Poverty Profile," Social Security Bulletin, January 1965, pp. 5-13. It is based on an "economy" food plan prepared by the Department of Agriculture for "temporary or emergency use when funds are low" (at p. 6) and allows an average of 70 cents per day per person for food and an additional $1.40 per day per person for all other items, including housing, medical care, clothing and carfare (p. 4).

Social Security Act designed to deal with dependent children, the Aid to Families with Dependent Children program. Section 601 of the Social Security Act (Title 42) sets forth the purpose of AFDC:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children. Aug. 14, 1935, c. 531, Tit

(emphasis added)

The extent of the failure of AFDC to meet the needs of the one child out of every five children in this country who lives below the poverty line is implicit in the following statement:

> In contrast to this total of 15.6 million needy children, in December 1963 only 3.1 million children were receiving assistance in the form of aid to families with dependent children, the public program designed ~~specifically~~ especially for them... (Orshansky, "Counting the Poor, etc." ibid pp. 15-16.)

Children are kept off the welfare rolls and denied AFDC payments for ~~many~~ many reasons. One of them is because such children fail to meet residency requirements. ~~This cannot continue~~.

~~The power the state has to condition and shape the nature of the benefits given to the poor~~ must be ~~is limited by due process, at least to the extent of preventing total denial of such benefits for~~ those ~~themselves with no other method of obtaining the necessities of life.~~ The ~~This right to benefits cannot be denied by use of a requirement like residence which is totally unrelated to the determinative factor of the child's need.~~

The children residing in Connecticut, Pennsylvania ~~and~~ and the District of Columbia whose governments have left them to starve must be able to compel these governments to meet fundamental responsibilities they owe them; legal responsibilities going back to the 16th century.

### ~~Due Process Prohibits The Denial of All Benefits to Those In Need of Them for Survival.~~

### A Challenge to Improper Denial of Benefits on Due Process Grounds is Particularly Appropriate.

We have shown that the obligation of government to provide for the poor is clear. We submit that its ________________, the right of the individual to demand the minimal necessities ~~necessary~~ required for survival, is partof due process, and that legislation such as residency requirements which deny this right run afoul of due process. Within this limited scope we are suggesting that due process provides something akin to a property right in those minimal benefits government has obligated itself to give for the last ~~one~~ four hundred years.

Bad.

We recognize that this Court will be extremely reluctant to strike down a state statute as a violation of due process where only property rights are involved. It will not sit as a "superlegislature to weigh the wisdom of legislation." Ferguson v. Skrupa, 372 U.S. 726, 731 (1963). But the scope of that decision is indicated by the examples given of the type of legislation which had in earlier times been set aside as violative of property rights under due process -- "laws prescribing maximum hours for work in bakeries..., outlawing 'yellow dog' contracts,...setting minimum wages for women...and fixing the weight of loaves of bread...." (372 U.S. at 729, citations omitted.)

Why? Bad

¶ The nature of this limitation on the use of substantive due process is also reflected in the statement in Williamson v. Lee Optical Co., 348 U.S. 483, 488 (1955) that "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and ~~in~~ industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." no ¶ [illegible]

But we do not here deal with this type of legislation -- or judicial interpretation of such legislation. The legislation here in issue is not designed to regulate business or industrial conditions but to ~~limit~~ avoid the state's responsibility to see that its children receive the necessities of life. There is no indication that the Court intended Ferguson v. Skrupa to read the word "property" out of the Fifth and Fourteenth Amendments, ~~especially where it is property which in our society is necessary for life and liberty~~.

~~It may be conceded that, where property rights alone are involved, the courts will accord a great degree of latitude to the legislature in the exercise of its judgment as to the best way to deal with the situation which calls for legislative intervention. But this does not mean that the courts will abandon their judicial responsibility of effectuating the mandate of the Due Process Clause. Admittedly there is There may be a strong presumption of constitutionality favoring legislation affecting property rights, but the presumption is not irrebuttable. Legislation may be so arbitrary and so wanting in a rational relationship to a lawful legislative end as to require judicial intervention.~~ Furthermore

~~But we go further and suggest that~~ the usual strong presumption of constitutionality is not applicable to the statute involved here. In the case at bar, the right to benefits asserted by the AFDC recipients partakes not only of the nature of a property right but also of the nature of a right to life and liberty. Furthermore, the famous Footnote 4 in United States v. Carolene Products Co., 304 U.S. 144, 151 (1938), is not limited to First Amendment freedoms. It specifically suggests that "prejudice against discrete and insular minorities may

[illegible]

be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

While the "minorities" principally contemplated in Carolene Products may well have been racial and religious groups, the decisions cited in support of the proposition were not limited to these groups. (The Court cited, inter alia, McCulloch v. Maryland, 4 Wheat. 316 (1819) and South Carolina State Highway Department v. Barnwell Bros., 303 U.S. 177 (1938), neither of which involved a racial or religious minority.) Historically, the poor have been a discrete and insular minority against whom prejudice exists sufficiently serious to curtail the operation of the ordinary political processes for the protection of minorities.

Edwards v. People of the State of California, 314 U.S. 160 (1941), while rejecting the concept that the poor may properly be treated as such an insular minority admits that they have been so regarded in the past. The Court quoted City of New York v. Miln, 11 Pet. 102, 103, at p. 143, in which it was said that it is

> as competent and as necessary for a state to provide precautionary measures against moral pestilence of paupers, vagabonds, and possibly convicts; as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported..." (at 176).

The Court, of course, now rejects such an attitude, stating in Edwards (at 177):

> Whatever may have been the notion then prevailing, we do not think that it will not be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence." Poverty and immorality are not synonomous.

The point is that at one time the poor were so regarded. As late as the turn of the century (Edwards at 176-77, citing cases), the "notion" of the ~~pp~~ poor as a moral pestilence was still so strong as to find its way into the language of Supreme Court opinions. [Do we bother citing other nasty characterizations of the poor?] ~~[illegible]~~

It follows from this that the right~~s~~ of the class asserted by the children in the present case, are entitled to that more exacting judicial protection which is accorded to First Amendment rights. Ordinarily, if a situation exists requiring legislative action, it is for the legislature and not the courts to determine the appropriateness of a proposed remedy, and the courts may not interfere unless the legislature's act was patently unreasonable. But for legislation abridging the rights of a "discrete and insular minority", a more rigorous test is imposed. "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." Thomas v. Collins, 323 U.S. 516, 530 (1945). "Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exdrcise of rights so necessary to the maintenance of democratic institutions." Thornhill v. Alabama, 310 U.S. 88, 95-96 (1940).

Whether measured by the "more exacting scrutiny" test imposed by United States v. Carolene Products, supra, or by the usual standard applicable to laws alleged to deprive persons of property without due process of law, the present statute, we submit, cannot stand. The test to be applied was expressed in Goldblatt v. Town of Hempstead, supra, 369 U.S. at/590, 594-5 (quoting Lawton v. Steele, 152 U.S. 133, 137 (1894)):

> To justify the state in * * * interposing its authority in behalf of the public, it must appear--First, that the interests of the public * * * require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

The interests of the public do not require the exclusion of children ~~from~~ from welfare who have not met a one-year residency requirement; such exclusion is not reasonably necessary for the accomplishment of a valid legislative purpose; and it is in fact unduly oppressive upon individuals.

In Breithaupt v. Abram, 352 U.S. 432, 436 (1957), the Court said due process is measured

> by that whole community sense of "decency and fairness" what has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this court has established the concept of due process.

Denying aid necessary for subsistence to those who cannot work is neither decent nor fair. Economic conditions must be taken into account in determining the reasonableness of legislation challenged on dur process grounds. (West Coast Hotel Co. v. Parrish, 300 U.S. 379, 390 (1937)). At a time when the Federal Government spends $__________ per year, of which only ___%* is spent on welfare, denying aid to those with no other source of sustenance because of failure to comply with a residency requirement "shocks the conscience" (Rochin v. People of California, 342 U.S. 165, 172 (1952). The responsibility of government to provide for the destitute is "so rooted in the tradition and conscience of our people as to be ranked as fundamental" (ibid at 169, citing Snynder v. Commonwealth of Massachusetts, 291 U.S. at 105) and it is "implicit in the concept of ordered liberty" (id., citing Palko v. State of Connecticut, 302 U.S. 319, 325 (1937).

---

* ______________ . Actually the per cent of the national gross
(source)
income applied for welfare is decreasing. ______________
source

The obligation of government to provide such relief is so fundamental and of such long standing as to meet the requirements of being part of the basic "law of the land" incorporated into due process. What may appear at first glance to be new, even radical, is the right we ask here for the individual to be able to demand that government meet its obligation by giving the individual indigent, through due process, recourse to the courts. Yet this too has its ancient historical precedent in the appeal to the Justices of the Peace in England and to the local Justices of the Peace and other local courts in the colonies, as discussed above.

Bad

The legal obligation being clear, developing a personal remedy for the individual through due process amounts to little more than a procedural change. Due process has been so precious to us precisely because of its ability to incorporate into itself such procedural safeguards when they are necessary to prevent substantive rights from being shorn of practical meaning.

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* Of course, this is most clearly illustrated in the development of criminal procedure. The clearest example is probably the change from Wolf v. Colorado, 338 U.S. 25 (1949) to Mapp v. Ohio, _________ U.S. _________ (195 ). In Mapp, the Court responded to practical necessities in insuring through development of the motion to suppress evidence that Fourth Amendment protections retain their vitality. The development of rules concerning the admissibility of confessions is another area in which due process has preserved the vitality of substantive rights. (See, _______ ________________.

> It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights. (Frank v. State of Maryland, 359 U.S. 360, 371 (1959); Wolf v. Colorado, 338 U.S. 25, 27 (1949)).

It is particularly appropriate that due process develops so as to protect the poor. As stated in Wolf v. People of State of Colorado, supra:

> This Clause exacts from the States for the lowliest and the most outcast all that is "implicit in the concept of ordered liberty" (citing Palko v. Connecticut, 302 U.S. 319, at 325).

~~[illegible] to travel to get rid of~~

"Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists."

~~Rf III~~

~~The Right to Travel~~

In United States v. Guest, 383 U.S. 745, (1966), the Court said:

> The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. (At 757, 759

This Court ~~went to great lengths to~~ emphasized the fundamental importance of the right to travel by tracing its historical ~~recognition~~ roots!, ~~stating~~ (at 757-758):

> Crandall v. State of Nevada, 6 Wall. 35, 18 L.Ed. 744, invalidating
>
> 758
>
> a Nevada tax on every person leaving the State by common carrier, the Court took as its guide the statement of Chief Justice Taney in the Passenger Cases, 7 How. 283, 492:
>
> "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."
>
> See 6 Wall., at 48–49.

U.S. v. Guest, supra, at 757, 758

27

The Court ~~further noted~~ then said (at 758):

> Although the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State,"[14] that right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.[15] In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

Nature of Fed Union.

The importance attached by the Court to the right to travel is also reflected in those cases dealing with international travel. In Kdnt v. Dulles, 357 U.S. 116 (1958), the Court said (at 126):

> is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

See also ~~This specific language was reiterated in~~ Aptheker v. Secretary of State, 378 U.S. 500, 505 (1964).

law ~~on the Privileges and Immunities Clause rather than the Commerce Clause~~, Justice Jackson, concurring, said (at 171) ~~in an opinion concurred in by Justices and~~

> This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from State abridgement, to enter any State of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

Continue Nagler insert B

~~Succinctly put in Thompson v. Shapiro, 270 F. Supp. 331, (1967), directly concerned with the right to travel is "its concomitant right to establish residence."~~

Justice Douglas in ~~a~~ ~~the~~ other concurring opinion joined by Justice Black and Murphy said; Nagler insert C

Regarded as a Favored Right, Legislation Discouraging Travel is Subjected to a Particularly Stringent Test.

In Point I, we suggested that because the group being discriminated against was an insular minority historically the subject of invidious discrimination, under the Carolene Products test legislation affecting that group will be subjected to the more exacting judicial scrutiny than otherwise. ~~protection accorded those exercising preferred rights like First Amendment rights~~. This more exacting protection applies in considering the constitutionality of residency requirements as conditioning benefits given by choice rather than constitutional mandate since such a condition tends to interfere with exercise of the right to travel by an insular minority.

In addition, such a strict standard of review is appropriate because of the particular right involved. The right to travel is regarded as a preferred right analogous to those rights protected in the First Amendment. In Aptheker v. Secretary of State, supra, this Court held unconstitutional on its face a section of the Subversive Activities Control Act of 1950, making it a crime for a member of an organization designated as an ~~Communist-fr~~ont organization controlled by Communists to apply for or attempt to use a passport. At that time it was a crime to travel outside the Western Hemisphere without a passport. The majority held the statute unconstitutional on its face, since it would apply to members of Communist-front organizations whether or not the particular individuals actually knew that the organization ~~was subject to~~ they had joined was under Communist control.

less important

The two particular defendants in the case were high officials of the Communist Party and the dissenters argued that the statute could be saved if the Court would take into account the limited application of the statute to knowing members of the Communist Party. no ¶

no ¶ The majority refused to do this, relying on Thornhill v. Alabama, 310 U.S. 88 (1940) and N.A.A.C.P. v. Button, 371 U.S. 415 (1963), both First Amendment cases. [ Quoting from N.A.A.C.P. v. Button, this Court applied to this travel case the special standards applied in stopping incursions into the area of First Amendment protected activity, stating (at 516):

> /I/n appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. /Citing cases/ The objectionable quality of vagueness and over-breadth... /depends/ upon the danger of tolerating in the area of First Amendment freedoms, the existence of a penal statute sisceptible of sweeping and improper application. /Citing case/ These freedoms are delicately vulnerable as well as supremely precious in our society. [ The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.]

Good → but later

The preferred position granted to the right to travel ~~was~~ like First Amendment rights even then spelled out when ~~the Court then concluded as follows~~ (at 517):

> Similarly, since freedom of travel is a constitutional liberty closely related to rights of free speech and association, we believe that appellants in this case should not be required to assume the burden of demonstrating that Congress could not have written a statute constitutionally prohibiting their travel. (At 517)

The standard for judicial review of state action interfering with the exercise of ~~favored~~ preferred constitutional rights is set forth in Thomas v. Collins, 323 U.S. 516 (1945) (at 529-30):

> The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. [Citing cases] That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. [Citing case]
>
> For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.

While, as noted above, the judiciary will not sit as a super legislature in reviewing state legislation (Ferguson v. Skrupa, supra), the Court will not defer~~red~~ to the judgment of the legislature when ~~such~~ preferred rights are intruded upon (Thomas at p. _)

4/20, *

Where the line shall be placed in a particular application rests, not on such generalities, but on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. /Citing case/ And the answer, under that tradition, can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this.

Good

## The State Cannot Condition Benefits So As To Stop Activities It Could Not Prohibit Directly.

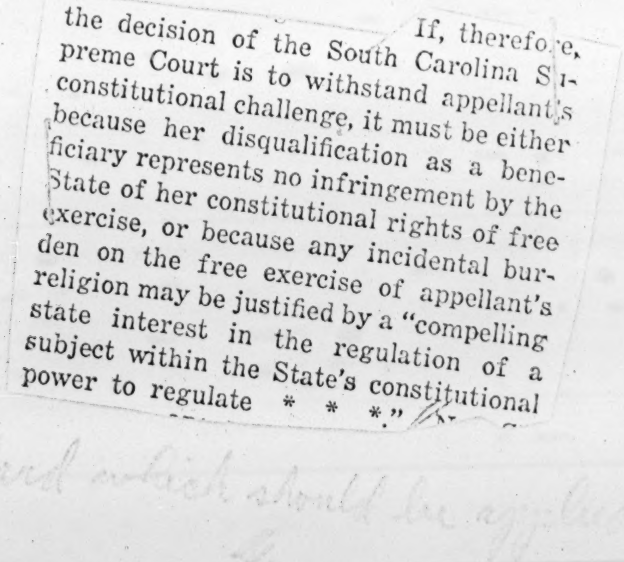
We submit that state action denying children within the state the right to participate in a program financed primarily by Federal money which would keep them alive, solely because their families have chosen to travel to or settle in the state, violates due process. Government cannot be allowed to buy up rights guaranteed by the Constitution.

We have shown that the right to travel has been accorded in Aptheker the favored position of a First Amendment right. This makes particularly relevant the holding in Sherbert v. Verner, 374 U.S. 398 (1963) where South Carolina sought to condition payment of unemployment compensation benefits on the necessity of the applicant being available for work on Saturday. Adell Sherbert, a Seventh Day Adventist, objected on the grounds ~~x~~ that it interfered with her free exercise of religion. The standard in determining whether this condition affecting a First Amendment right was constitutional as set forth at page 403:

Too much

Preten

Shorten



> If, therefore, the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a "compelling state interest in the regulation of a subject within the State's constitutional power to regulate * * *."

This is the standard which should be applied to intrusions into the right to travel.

No Pt 4 Title →

The Court stated (at 404):

Good analogy *

> Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.

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This is precisely the predicament faced by AFDC recipients. The pressure to forego their right to travel is unmistakable. Denial of the benefits derives solely from exercise of the constitutionally protected right to travel.

The Court rejects distinctions based on the fact that the potential beneficiary is only indirectly dissuaded from exercising the right. The potential beneficiary does not have to show that the benefit lost is one in which she had a property right (at p. ):

> In Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms. We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. While the State was surely under no obligation to afford such an exemption, we held that the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights of expression and thereby threatened to "produce a result which the State could not command directly." 357 U.S.,

A. 1. Availability of ~~Gov't~~ AFDC (Welfare Benefits May Not Be Conditioned on ~~their~~ Surrender of Basic Con'al Rts, Such As Rt to Travel. (~~+ Fed Nature of Problem & Program~~)

Sat
bad

~~II~~ B Availability of ~~Gov't~~ AFDC (Welfare) Benefits such as AFDC May Not Be Encumbered With Uncon'al Conditions.

Make this Pt III

Make Rt to Travel Pt II

(B). Residency Requirements are Unreasonable Because they are Inconsistent w. Fed Nature of Problem & Program (See Edwards + Cardozo)

(C) Resid. Requirements are Uncon'al Because They Are Not Reasonably Related To Any proper Governmental Interest

1. ~~People~~ "Economy - not true.
2. People Travel For Better Life. - Not Welf.

Pt I -

state Interest

In considering whether the state had some compelling interest which justified the substantial infringement of appellant's First Amendment rights, this Court said (at 406):

> ". . . It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation," Thomas v. Collins, 323 U.S. 516, 530,

~~Because~~ the right to travel As a preferred ~~is a favore~~d right, like First Amendment rights, ~~we suggest tha~~t legislation interfering with the exercise of ~~that right~~ must be examined by the same strict standards. By ~~that~~ Under such a standard, residency requirements clearly violate the Due Process Clause of the Fifth and Fourteenth Amendments in that they operate so as to place an unjustifiable burden on the exercise of the right to travel.

Residency requirements also fail to meet the less stringent test which would be applied with regard to ~~any~~ a benefit which is conditioned upon waiver of ~~a~~ any constitutional right. In Frost & Frost Co. v. Railroad Commission, 271 U.S. 583, 594 (1926), this Court said:

> Broadly stated, the rule is that the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal constitution.
>
> * * *
>
> If the state may compel the surrender of one constitutional right as a condition of its favor, it may in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.

## The Condition is Too Oppressive

Whether judged by the standard in Sherbert or the standard in Frost, residency requirements are too oppressive to survive a due process attack. Robert M. O'Neil, in his excellent article, "Unconstitutional Conditions: Welfare Benefits with Strings Attached," 54 Calif. L. Rev. 443 (1966), suggests that the broad rule in Frost is subject to certain qualifications. He suggests that the particular condition must be analyzed to determine the nature and the extent of the interference with the exercise of the constitutional right involved. Under such analysis, residency requirements for AFDC benefits emerge as particularly onerous infringements on a constitutionally protected right..

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But before proceeding to such an analysis, it should be noted that Edwards is also relevant. Edwards stands for the proposition that a state may not act ~~[illegible]~~ indirectly (whether by conditioning a benefit or otherwise) to discourage exercise of the right to travel to and reside in a state. The California law rejected in Edwards did not prohibit ~~anyone~~ indigents from entering the state. It only sought to discourage the free exercise of this right by stopping others from helping indigents to enter the state.

As already noted, AFDC recipients desperately need the benefit the government is offering. If anything, the AFDC recipient is more dependent on receiving that benefit than Adell Sherbert was dependent upon receiving unemployment compensation benefits. AFDC is given only when the individual has no alternative method of ~~receiving~~ obtaining the benefit~~s~~ it offers. Furthermore, ~~these are~~ it is not a benefit~~s~~ that the individual can afford to

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do without. Therefore, for practical purposes, conditioning AFDC payments on residency does not permit the recipient any choice at all. He cannot choose to forego the benefit and exercise the liberty to travel. Practically speaking, conditioning welfare benefits on residency will tie the poor to the place of their misfortune with the same effectiveness as the English did with the settlement and removal laws of the 18th century.

No overriding public purpose has been suggested ~~justification for residency requirements can be produced.~~ which will meet the minimum standard necessary to justify interference with the right to travel, ~~whether it be regarded as a preferred right or otherwise.~~ Since precisely the same analysis of the attempted justification for residency requirements is required in determining whether residency requirements comply with minimal standards of equal protection, such analysis will be left for Point III of this brief.

## III. DIVIDING ~~STATE CITIZENS~~ RESIDENTS INTO TWO GROUPS, AND DENYING FUNDAMENTAL BENEFITS AVAILABLE TO ONE GROUP TO THE OTHER, SOLELY BECAUSE THEY HAVE RESIDED IN THE STATE LESS THAN ONE YEAR, VIOLATES EQUAL PROTECTION.

We have urged in Point II that the intrusion upon the exercise of freedom of travel is so egregious and unjustifiable as to constitute a deprivation of both life and liberty without due process. We here argue that even if it were less egregious and less unjustifiable, residency requirements for AFDC payments violate the mandate of equal protection imposed by the Fourteenth Amendment. The nature of the violation of the Fourteenth Amendment of which we speak under this Point III is itself so fundamental to the concept of equal protection as to be included among that part of equal protection which itself has been incorporated into the Due Process Clause of the Fifth Amendment. See Bolling v. Sharpe, 347 U.S. 497 (1954) and ________________ v. ______________, ______ . Thus, this argument is applicable to the District of Columbia case as well as to the Pennsylvania and Connecticut cases.

~~We submit that~~ State action denying children within the state the right to participate in a program financed ~~primarily~~ with ~~by~~ Federal and State funds ~~money~~ which would help keep them alive, solely because they have resided in the state for less than one year denies to them as citizens of the state and as Federal citizens equal protection of the laws. Like due process, equal protection is an expanding concept. Merely because settlement and removal laws were countenanced in this country in the past does not mean that such discrimination is now permissible. This Court said in Harper v. Virginia State Board of Elections, 383 U.S. 663, 669 (1966):

(POINT III)

> * * * The Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process toxx a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. See Malloy v. Hogan, 378 U.S. 1, 5-6. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change. (Emphasis in original.)

The guarantee of the Equal Protection Clause is not met merely by a showing that all within a class are treated equally. In McLaughlin v. Florida, 379 U.S. 184, 190 (1964) this Court said (quoting from the earlier decision of Gulf, C. & S. F. R. Co. v. Ellis, 165 U.S. 150, 155 (1897)):

> Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such purpose." * * * "[A]rbitrary selection can never be justified by calling it classification."

After citing numerous cases in support of this position, the Court continued:

> Judicial inquiry under the Equal Protection Clause, therefore, does not end with a showing of equal application among members of the class defined by the legislation. The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose. * * *

The purpose of the AFDC program is set forth in the Federal statute creating the program and authorizing Federal contributions to its financing:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financing assistance and rehabilitation and other services, as far as practicable under the conditions in such States, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal

> independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. Social Security Act of 1935, § 401, as amended, 42 U.S.C. § 601.

Residency requirements bear no positive relationship (whatever) to this purpose. In fact, denial of (failure to provide) relief payments for one year (will) frustrates the purpose of the statute, often resulting in the break-up of homes prior to the time the family can become eligible for welfare. For example, the Harrell family in the District of Columbia case has been advised that since Mrs. Harrell and her three children are not eligible for AFDC payments, Mrs. Harrell should consider breaking up her home and placing her children in an orphanage. (Citation) The three-judge court in Delaware, recently holding that the AFDC residency requirement in Delaware is unconstitutional, said:

> It is evident to us that as to these families living in Delaware for less than one year the denial of public assistance fails to carry out the stated purposes of the Public Assistance Code. It in fact tends to frustrate them. The residency requirement prevents prompt assistance to some of the State's needy and distressed and to that extent is the antithesis of "humane." It also necessarily results in pressure on the solidarity of the family unit. Nor given these circumstances is it an acceptable answer to say that until they are here one year such persons are not a part of the state's needy and distressed. The discrimination based on length of residency thus finds no constitutional justification in the purpose declared in the statute itself. Green v. Department of Public Welfare, 270 F. Supp. at 177 (D. Del. 1967).

Since the pattern of invidious discrimination suffered by the poor pervades our society, a review of the propriety of the discrimination between citizens who reside in the state for more than one year and those who reside in the state for less than one year with regard to AFDC benefits should bear the heavy burden of justification required by laws discriminating on the basis of race. ~~See~~ In McLaughlin v. State of Florida, supra at 196, this Court said:

My Point II (C)

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> Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld only if it is necessary, and not merely rationally related, [illegible] to the accomplishment of a permissible state policy.

And, of course, this standard of testing compliance with equal protection is also applied in testing compliance with due process when, as under Point II, a preferred right, such as the right to travel, is intruded upon. (See Thomas v. Collins, supra, at ____, stating that due process limits such intrusions to those situations where a grave and impending public danger requires it.) But residency requirements cannot meet even the less rigorous ~~[illegible]~~ standard applied, requiring that there be some legitimate purpose and that the means chosen to achieve that end not be irrational or unduly oppressive upon the individual. (See Goldblatt, supra, at ______.).

Residency requirements are so repugnant to the purposes of AFDC, work such a brutal hardship on those who because of this classification are denied its benefits and are so unrelated to any legitimate end that they fail to reflect that minimal rationality required by due process and equal protection. The justifications for such requirements that have been offered may be listed as follows:

1. The desire to discourage needy persons from coming to a state or remaining in the state and thereby protecting the public treasury. This argument is dealt with by the three-judge court in cases challenging the residency requirements of Delaware, Wisconsin and Pennsylvania, the last here on appeal. (See Green v. Department of Public Welfare of the State of Delaware, 270 F. Supp. 173 at 177 (1967); Ramos v. Health and Social Services Board of State of Wisconsin, 276 F. Supp. 474 at 477 ( ); and Smith v. Reynolds, 277 F. Supp. 65 at 68 (1967). In each of the three cases, the court indicates that obviously Edwards v. California declared that legislation designed to carry out this purpose is unconstitutional. The following additonal justifications can be dealt with in one answer after they are listed.

2. The desire to make it unprofitable to come to a state to obtain AFDC benefits. (Ramos, supra, at p. 277). It would appear that this is what was intended by the State of Delaware when it sought to justify the law on the ground of the desire to "assure eligibility for welfare payments and thereby to avoid payments tainted with fraud or based on insufficient information. (See, also, the decision of the

~~(POINT [illegible])~~

lower court in the District of Columbia case, Harrell v. Tobriner, ____________ F. Supp. ____ at ____ (1967) [Court copy, p. 15, dated Nov. 2, 1967.] ~~Both this justification and the remaining ones can be responded to in one answer.~~

3. The one-year residency requirement provides an objective test of whether there is actually intent to become a resident of the state by taking up residence for the indefinite future. (Green, supra, at 177; Smith v. Reynolds, supra, at 68; [Check Harrell v. Tobriner.]

4. To allow certainty in preparing state budgets.

My Point II C

None of these last three reasons justify so extreme a measure as residency requirements. The Court in Ramos rejects a claim that such a requirement is justified to stop people from moving to "a greener welfare pasture," stating as follows (at p. 478):

> It has the effect of a conclusive presumption that all people who need aid within a year have come for that purpose. It not only exerts the duress of the denial of the necessities of life upon people who have been so motivated, but also upon others who have come for different reasons, and upon children who have exercised no choice in the matter. In our opinion, the presumption of validity is overcome.

This argument is applicable to all three of the last possible purposes.

This is particularly true when we realize the oppression suffered by those brought within the overbroad classification. As the Court said in Green (at p. 177):

> In the light of the often immediate need of these persons for food, clothing and shelter, we think that the one year period is a constitutionally unreasonable test for determining the "intention" aspect of domicile, assuming such was its purpose. More accurate alternatives are available to ascertain an individual's true intentions without exacting the protracted waiting period with its dire economic and social consequences to certain individuals living in the State.

The fundamental irrationality of this type of classification is set forth in the Pennsylvania case (at p. 68):

Use at end of Pt 1.

> Needy newcomers are no less needy because they are newly arrived. They are no less residents of the State because they have only lately begun to reside there. And they are no less entitled to enjoy the public welfare benefits of which every needy resident of Pennsylvania may partake simply because they have experienced their critical need soon after migrating to their new home.

For this reason, both as a condition of welfare benefits affecting the right to travel and as an arbitrary classification, residency requirements must be regarded as unconstitutional.

[Certain things should be added to build up the brief, including Carrington v. Rash, 380 U.S. 89 and some of the cases such as N.A.A.C.P. v. Button talking about over-breadth.]

## POINT ONE.

### PUBLIC ASSISTANCE TO THE POOR IS ONE OF THE OLDEST AND MOST BASIC OF GOVERNMENT BENEFITS.

Provision for the basic needs of the poor has been recognized as a duty of society since biblical times. [Citation that's all. Maybe a footnote.]

For four hundred years this need has been recognized by Anglo-American law as an obligation of temporal government. In 1572, Parliament passed a law (14 Elizabeth c. 5) which was a landmark in the development of governmental assistance to the poor. It established as national policy that the poor must be provided for through monies raised by public taxation. Riesenfeld, Stefan A: "The Formative Era of American Public Assistance Law," 43 Calif. L. Rev. 175, 180 et seq. (1959). Revision in 1597 (39 Elizabeth c. 3) and, more important, in 1601 (43 Eliz. c. 2) did much to establish the character of poor relief -- programs passed down through the American colonial period. tenBroeck, Jacobus, "California's Dual System of Family Law: Its Origin, Development and Present Status," Part I, 16 Stanford L. Rev. 257, 258 (1964). Professor tenBroeck described the most salient feature of that period:

> "The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide." (Ibid., at 262)

The obligation of government to insure survival and the role of the judiciary in providing relief to the poor is reflected in Gilbert's Act of 1782, summarized as follows:

> "... Any applicant who could not get employment in the ordinary way should by the Poor Law Guardians -- without explaining how -- be provided with it and be fed and lodged until it could be given. Failing such relief, any justice of the peace was expressly empowered, after inquiry upon oath, to order 'some weekly or other relief.'" Webb, S. & B., *English Local Government. English Poor Law History, Vol.1*, Longmans Green & Co., Ltd. (1927) at 171.

The system, thus handed down to the American colonies had many infirmities. Administration and financing were exclusively local. This caused the limitation of eligibility to those who had been born in a community or had long lived there.

> "Other poor persons were kept out or removed to the place of their settlement.... From the community's point of view, he was bound to the place of his misfortune, restricted in his free movement and his personal opportunity. From society's point of view, the economy was fragmented, rendering more difficult the solution of economic problems that were regional and national. All of this is true today. ten Broeck, *ibid.*, at 565.

Indeed the indignities imposed on the pauper both in England and the colonies were cruel in nature and legion in number.[1/] Nonetheless, the basic importance of providing for the poor and the obligation of government in this regard were so firmly implanted that by the end of

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[1/] "The need for or the actual receipt of assistance created . . . a veritable 'pauper statis.' Thus the pauper was required to wear a badge with the letter P, a practice which was first given statutory sanction by the Pennsylvania Poor Law Amendment Act of 1718, 3 Pa. Stat. at L. 1712-1724, 221 (1896); he was required to be farmed out to the bidder at public auction, see, e.g., Indiana Poor Law of 1807 . . .; he could be thrown into the poor-house against his will, see, e. g. *Harrison v. Gilbert*, 71 Conn. 724, 43 Atl. 190 (1899) (denying a writ of habeas corpus); he could and apparently still can, without violation of the constitutional guarantees, be forcibly removed to his place of settlement; *Lovell v. Seeback*, 45 Minn. 465, 48 N.W. 23 (1891); he lost the right to vote and still does under the constitution of Massachusetts, Mass. Const. Art. of Amendments III, and Texas, Tex. Const. Art. VI, Sec. 1." RIESENFELD & MAXWELL, MODERN SOCIAL LEGISLATION 709 (1950).

> The law not only regards life and liberty and protects every man in the enjoyment of them, but also furnishes him with everything for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of the community, by means of the several statutes enacted for the relief of the poor. (Page 95, American Editions of J. B. Lippincott & Co. from the 19 London Edition, Page 131, 12th ed., London, 1793.)

An indication of England's concern that her colonial governments provide for the needs of the poor is reflected in the request of the Committee for Trade and Foreign Plantations of the English Privy Council in 1680 for information as to provisions made in Connecticut for relieving poor, decayed and impotent persons. Capen, Historical Development of the Poor Law of Connecticut, (Columbia U. Press, 1905) at p. 22.

The importance of providing the necessities of life was discussed by Mr. Justice Brewer before his elevation to the Supreme Court:

> The relief of the poor -- the care of those who are unable to care for themselves is among the unquestioned objects of public duty. In obedience to the impulses of common humanity, it is everywhere so recognized. State ex rel. Griffith v. Osawkee Twp., 14 Kan. 418, 421 (1875).

With the advent of the S.SAA. in 1935, the involvement of government in the provision of basic needs assumed new dimensions:

> The law established the individual's immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources. Cracking four hundred years of complete relegation of the poor to the largesse of their most immediate neighbors was bound to have psychological consequences as significant as the fiscal.

> Another important element was the series of requirements imposed upon states for receiving federal grants-in-aid," (Citing in footnote 19 requirements as of 1965). Wedemeyer, J.M. and Moore, Percy, "The American Welfare System," 54 California L. Rev. 326 347 (1966).

Indeed, numerous other requirements are specified in the regulations of the U.S. Department of Health, Education and Welfare. In any case, the participation of the national government was inevitable" ...if the people were not to starve." Steward Machine Co., v. Davis, 301 U.S. 548, 586 (1937).

Whether one regards the benefits provided pursuant to the categorical assistance programs of the Social Security Act as "rights" or "privileges", they must be recognized as basic to human survival. Unlike many other benefits provided by government, the Social Security Act programs provide only needs basic to life and usually less than that. Under the Act, each state is required to establish "minimum standards of health and decency" but is only required to furnish assistance "as far as practicable under the conditions in such State." Cf 42 USA 3602 and 606 S.S.A. of 1935; ch 531; 49 Stat 620. As a result many states pay only a percentage of their own "minimum standard."* The "survival" which these payments permit is commonly one in which the beneficiaries are ill housed, ill clothed and ill fed.

> "This sum an average of about $36 monthly for each recipient of AFDC is well below the poverty subsistence level under any standard. The National Advisory Council on Public Welfare has commented: "The national average provides little more than half the amounts admittedly required by a family for subsistence; in some low-income states it is less than a quarter of that amount. The low public assistance payments contribute to the perpetuation of poverty and deprivation that extend into future generations." Report of the National Advisory Commission on Civil Disorders (N.Y. Times Co., 1968).

Approximately 4.8 million people, including 3.6 million children receive A.F.D.C. Ibid at 457. All of the named plaintiffs would receive A.F.D.C.

Without life none of the other rights and privileges accorded by the Constitution or state or federal statutes have value.

In determining whether conditions imposed on benefits or privileges are valid the Court has applied varying standards depending upon the benefit under consideration and the extent to which the condition imposed violates; inhibits or deters fundamental rights. There, the benefit is basic to survival, and the condition imposes a burden, the right to travel freely. The test to be applied therefore is whether the condition imposed is "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida*, 379 U.S. 184, 196 (1964).

Assuming, *arguendo*, the existence of a rational connection between a one year period of residence as a prior condition to the receipt of public assistance and some valid legislative purpose:

> "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945).

Unlike a residency condition on the right to vote, such a condition on the receipt of AFDC benefits goes directly to the most basic right - "the right to life..." Named first in the due process clauses of the 5th and 14th Amendments. [Cite]

People can live for a year without the minimal amounts provided for, food, clothing and shelter under the AFDC program? As the court in *Green* v. *Dept. of Public Welfare of the State of Delaware*, (207 Supp. 173 (D. Del 1967) recognized (at 178):

"..the need for food, clothing and lodging has an aspect of immediacy which differentiates it in kind from the right to a vote."

## POINT TWO.

## RESIDENCY REQUIREMENTS ARE UNCONSTITUTIONAL BECAUSE THEY INTERFERE WITH THE RIGHT TO TRAVEL.

Rt to Travel

Government cannot bargain with the poor so as to buy up basic rights of citizenship in exchange for the necessities of life. Residency requirements in effect take away from the poor the right xxxx to travel, the right to make the most of job opportunity and their freedom to associate with relatives and loved ones.

### The Right to Travel

In United States v. Guest, 383 U.S. 745~~,~~ (1966), the Court said:

> The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. (At 757.)

And at page 759 the Court said:

> Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvas those idfferences, further all have agreed that the right exists.

Th~~i~~s Court ~~went to great lengths~~ to emphasized the fundamental importance of the right to travel by tracing its historical roots ~~recognition~~, ~~[illegible]~~ (at 757-758):

Crandall v. State of Nevada, 6 Wall. 35, 18 L.Ed. 744, invalidating a Nevada tax on every person leaving the State by common carrier, the Court took as its guide the statement of Chief Justice Taney in the Passenger Cases, 7 How. 283, 492:

> "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."

See 6 Wall., at 48–49.

The Court ~~further noted~~ then said (at 758):

> Although the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State,"[14] that right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.[15] In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

The importance attached by the Court to the right to travel is also reflected in those cases dealing with international travel. In Kdnt v. Dulles, 357 U.S. 116 (1958), the Court said (at 126):

> is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

~~This specific language was reiterated in~~ See also Aptheker v. Secretary of State, 378 U.S. 500, 505 (1964) quoting from this language.

The right to travel includes the right to settle in a state. In Edwards v. People of the State of California, supra, this Court held that a law making it a misdemeanor to assist in bringing into the state any indigent person who is not a resident of the state was unconstitutional. The defendant, Edwards assisted his indigent brother-in-law to enter California for the purpose of residing there. Edwards v. Cal. supra, at 170. California argued that it could not bear the financial burden resulting from the migration of indigents to the state:

> "Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal,the indigent sick, the blind and the insane.
>
> Should the States that have solong tolerated, and even fostered the racial conditions that have reduced there people to their state of poverty and wretchedness, be able to get rid of them by low relief and drive them into California to become our public charges, upon our immeasurably higher standard of soc. services? Naturally, when these people can live on relief in California better than they can by working in Miss., Ark., Tex. or Okla., they will continue to come to this state." 314 U.S. at 168.

The court rejected this argument:

> The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not consider it our function to pass upon the wisdom, need, or appropriateness of the legislative efforts of the states to solve such difficultites [citing cases.]
>
> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the partof any single State to isolate itself from difficulties commont to all of them by restraining the transportation of persons and property across the borders.

While all agreed that there is a right to travel, four justices concurred in two separate opinions, differing from the majority only as to its constitutional source.

Justice Jackson, concurring, said (at 171):

> This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from State abridgement, to enter any State of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.... That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our civilization.
>
> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a shortsighted blow at the security of property itself.

Justice Douglas in the other concurring opinion, joined by Justices Black and Murphy said:

> The conclusion that right of free movement is a right of *national* citizenship stands on firm historical ground. If a state tax on that movement, as in the Crandall case (Crandall v. Nevada, 6 Wall 35, 18 L. Ed. 745 (1868), is invalid, a fortiori a state statute which obstructs or in substance prevents that movement must fall. That result necessarily follows unless perchance a State can curtail the right of free movement of those who are poor or destitute. But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity.

Thus, the Court has recognized that poor people have a right to travel too. Economic burdens on state governments resulting from the exercise by poor people of the right to travel do not justify infringement of that right.

To infringe this basic right, a state must make a showing of "strict necessity".

## POINT THREE.

### AVAILABILITY OF AFDC BENEFITS MAY NOT BE ENCUMBERED WITH UNCONSTITUTIONAL CONDITIONS.

### (A) AVAILABILITY OF AFDC BENEFITS MAY NOT BE CONDITIONED ON SURRENDER OF BASIC CONSTITUTIONAL RIGHTS SUCH AS THE RIGHT TO TRAVEL.

In Point I we indicated the basic importance of welfare benefits to the survival of large numbers of people. We urged that this Court in judging the constitutionality of conditions such as residency laws, apply a strict standard of necessity.

In Point II, we indicated that this Court has regarded the right to travel freely as a basic right not to be encumbered without a showing of stringent necessity such as flood, fire or pestilence (_Edwards_, v. _California_, supra at 185) or "the weightiest considerations of national security." (Zemel v. Rusk, 381 U.S. 1, 16 *1965).

As in _Sherbert_ v. _Veiner_, 374 U.S. 398 (1963), the citizen is forced to choose between the exercise of basic rights (there, the free exercise of religion) and the forfeiture of government benefits. The citizen is subjected to "a choice between the rock and the whirlpool." _Frost &.Frost Trucking Company_ v. _Railroad Commission_, 271 U.S. 583, 593 (1926).

This is precisely the predicament faced by AFDC recipients. The pressure to forego their right to travel is unmistakable. Denial of the basic benefits involved here derives solely from the exercise of the constitutionally protected right to travel.

The Court rejects distinctions based on the fact that the potential beneficiary is not prevented from exercising his basic rights, but merely deterred or inhibited:

> "The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." A ptheker, supra at 516. Citing NAACP v. Button 371 U.S. 415 (1963)

Even a "chilling effect" on the exercise of basic rights is sufficient. Dumbrowski v. Pfister, U.S.

As the District Court in Thompson v. Shapiro noted, the burden of free travel rejected in Edwards v. California, supra, was incidental, not direct. It was not the poor person who was prosecuted for entering the state, but the person who transported him.

This is true where the benefits derivable from the state are far less valuable than those in question here. Indeed, even where the benefits are completely gratuitous and even ephemical, they may, not be subjected to conditions which "deter or inhibit" the exercise of basic rights. Speiser v. Randall, 357 U.S. 513 ( ) (a tax exemption conditioned on a loyalty oath).

The travels of the poor are already sufficiently encumbered by the facts of their poverty. As appears in detail hereafter, the poor travel for reasons far more basic than their affluent contemporaries. As we will also indicate later, a one-year-residency condition on the receipt of AFDC benefits cannot be justified by any overriding necessity for the inhibition of the right to travel freely.

It should be remembered that AFDC BENEFITS are given only when the family has no alternative means of support. 92 U.S.C.A. . AFDC families cannot, in many cases, choose to forego the benefit and exercise the liberty to travel. Practically speaking, conditioning welfare benefits on residency tends to tie the poor to the place of their misfortune in the same manner as the English statutes regarding settlement and removal of the poor in the 18th Century. Those who do succeed in moving

moving out of unsatisfactory circumstances often find themselves in a shocking position:

> 1."Some American citizens are stateless, having lost residence in one place without gaining it in another, and ineligible for assistance anywhere. Some of these people can never ~~because~~ become eligible because in certain states they cannot gain residence unless they are self-supporting.
>
> 2. Others are sent back to their place of residence even when their return is undesirable from the point of view of the individual or the community." Simons Saville H. Social Welfare Forum - National Conference on Social Welfare, 1962." Services to uprooted and Unsettled Families."

No "subordinating interest which is compelling" (Bates v. City of Little Rock, 361 U.S. 516, 524 (1960),

No overriding public purpose to which there is no alternative (McLaughlin v. Florida, 379 U.S. 184, 196 (1964); Shelton v. Tucker, 364 U.S. 479, 488 (1960); Schneider v. Irvington, 308 U.S. 147 (1939). has been suggested here which could justify interference with the right to travel under these circumstances; (See Point II Binfra).

### B. ONE-YEAR RESIDENCY REQUIREMENTS IN AFDC CASES DENY "EQUAL PROTECTION" OF THE LAWS.

The denial of "equal protection of the laws inherent in one-year residency laws is so arbitrary and fundamental that it may be regarded in itself as violative of the Due Process Clause of the Fifth Amendment as well as the "equal protection" clause of the Fourteenth Amendment. See Bolling v. Sharpe, 347 U.S. 497 (1954).

In establishing one-year of residency as a condition precedent to the receipt of AFDC benefits the legislatures of Pa. and Conn., and Congress for the District of Columbia established a class of persons who are ineligible solely because they have resided in the jurisdiction for less than one-year. There is no question that any of the Plaintiffs-Respondents before the Court would be eligible but for the residency requirement. *Howell* v. *Tobriner*, F. Supp (1967); *Thompson* v. *Shapiro*; F. Supp (D. Conn. 1967); *Smith* v. *Reynolds*, F. Supp (F.D. Pa. 1967).

In assessing the validity of the classification by equal protection standards, it is not sufficient that all within the class of persons are treated alike. *McLaughlin* v. *Florida*, supra at 190; *Covington* v. *Rash*, __________________ U.S. _________.

In addition the one-year residency requirements and the class they establish must be shown to be reasonable in light of the overall purpose of the AFDC program and the broader class covered by it. *Gulf, C.&S. F.R. Co.* v. *Ellis*, 165 U.S. 150, 155 (1967). The purpose of the AFDC program is set forth 9n the Social Security Act:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State ~~for~~ to furnish financing assistance and rehabilitation and other services, as far as practicable under the conditions in such States, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. Social Security Act of 1935, § 401, as amended, 42 U.S.C. § 601.

Residency requirements bear no positive relationship (whatever) to this purpose. In fact, (failure denial of to provide) relief payments for one year (will) frustrate the purpose of the statute, often resultuing in the ~~break~~ break-up of homes prior to the time the family can become eligible for welfare. For example, the Harrell family

family in the District of Columbia case has been advised that since Mrs. Harrell and her three children are not eligible for AFDC payments, Mrs. Harrell should consider breaking up her home and placing her children in an orphanage. (Citation) The three-judge court in Delaware, recently holding that the AFDC residency requirement in Delaware is unconstitutional, said:

> It is evidence to us that as to these families living in Delaware for less than one year the denial of public assistance fails to carry out the stated purposes of the Public Assistance Code. It in fact tends to frustrate them. The residency requirement prevents prompt assistance to some of the State's needy and distressed and to that extent is the antithesis of "humane." It also necessarily results in pressure on the solidarity of the family unit. Nor given these circumstances is it an acceptable answer to say that until they are here one year such persons are not a part of the state's needy and distressed. The discrimination based on length of residency thus finds no constitutional justification in the purpose declared in the statute itself. Green v. Department of Public Welfare, 270 F. Supp. at 177 (D. Del. 1967).

In a recent paper, Savilla M. Simons, analyzed the effect of residency laws on the urban poor:

> "In general, the immigrants who come to the central city are poor, with little education and few skills. Sometimes they are illiterate, deprived culturally and socially. Frequently, they are forced to move by poverty, unemployment, or displacement by automation....
>
> The impoverished immigrants in our cities are subjected to all the slum conditions and problems of urban life from which the resident poor suffer... But all these problems are greatly exaggerated and aggravated for the new arrivals because of strangeness, his unfamiliarity with urban life, his tragic lack of preparedness for the conditions he now faces, and the unfriendliness and sometimes outright rejection by local residents.
>
> Consequently, the mobile poor especially need help and intensive services of various kinds upon their arrival. Paradoxically, very little aid of a constructive nature is available to them."

Simons, Savilla M., "Social Work Services For
The Urban Mobile Poor," Social Work Practice,
National Conference on Social Welfare (1965)
pp. 164, 165.

Thus, it appears that residency laws run directly counter to the asserted purpose of the Social Security Act.

Even if for some reason the conflict between the residency requirement and the general statutory purposes is not fatal, the statute nonetheless violates "equal protection" standards.

Conditions establishing classes such as the one in question must at very least bear a "rational relation" to the purpose for which the classification is made. Rinaldi v. Yeager, 384 U.S. 305 (1966); Covington v. Rash, supra. Where fundamental rights are impaired such as the right to travel and the availability of basic needs (or either of them), a higher standard is applicable, be the right related to due process or equal protection.

> "Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld on if it is necessary, and not merely rationally related to the accomplishment of a permissible state policy." McLaughlin v. State of Florida, supra at 196.

But the residency requirements in question fail to meet even the less rigorous standard, requiring only that there be some legitimate purpose and that the means chosen to achieve that end not be irrational or unduly oppressive upon the individual. Goldblatt etc.

Justification for the hardship imposed by the requirement of one year of residency prior to the granting of A.F.D.C. benefits has been offered on several grounds:

1. Whether it is admitted or not, the foremost of these grounds is the desire to discourage needy persons from entering or remaining in the state and thereby increasing the burden of welfare costs on the public treasury. Aside from the burden on the right to travel which has been discussed earlier and which this reasoning seeks squarely to impose "Equal protection" is violated because the residency requirement establishes a presumption that anyone in the class of poor persons who entered the state during the past year, did so for the purpose of obtaining public assistance benefits. The legislative history of most if not all residency statutes indicates a primary desire to prevent an invasion of indigents seeking higher benefits. Cf. Thompson v. Shapiro, supra, at ------ n.------. Not only is the premise that people move to a state for the purpose of obtaining welfare assistance demonstrably false, but also the purpose of deterring movement fails completely. As Simons wrote several years ago:

> All evidence shows this is not so. [that people move into a state to get on relief.] People move primary to secure employment, to be with relatives, sometimes to find a more favorable climate, or in order to cope with emotional problems. California, Arizona and Florida have the highest residence requirements permitted, but they continue to have the highest in-migration in the country. On the other hand, in New York State even before the Anti-Abuse Law went into effect, when there was no legal residence requirement for public assistance, less than 2 per cent of the cases receiving assistance had been in the state less than one year, even though New York has high assistance standards and is surrounded by states that

make lower payments. Simon, Savilla H., "Services to Uprooted and Unsettled Families," supra at 174.

Simons' statements are supported by statistics compiled by Robert J. Lampman from 1950 and 1960 census figures: Pov. & Aff. Table 2.9. at p. 37.

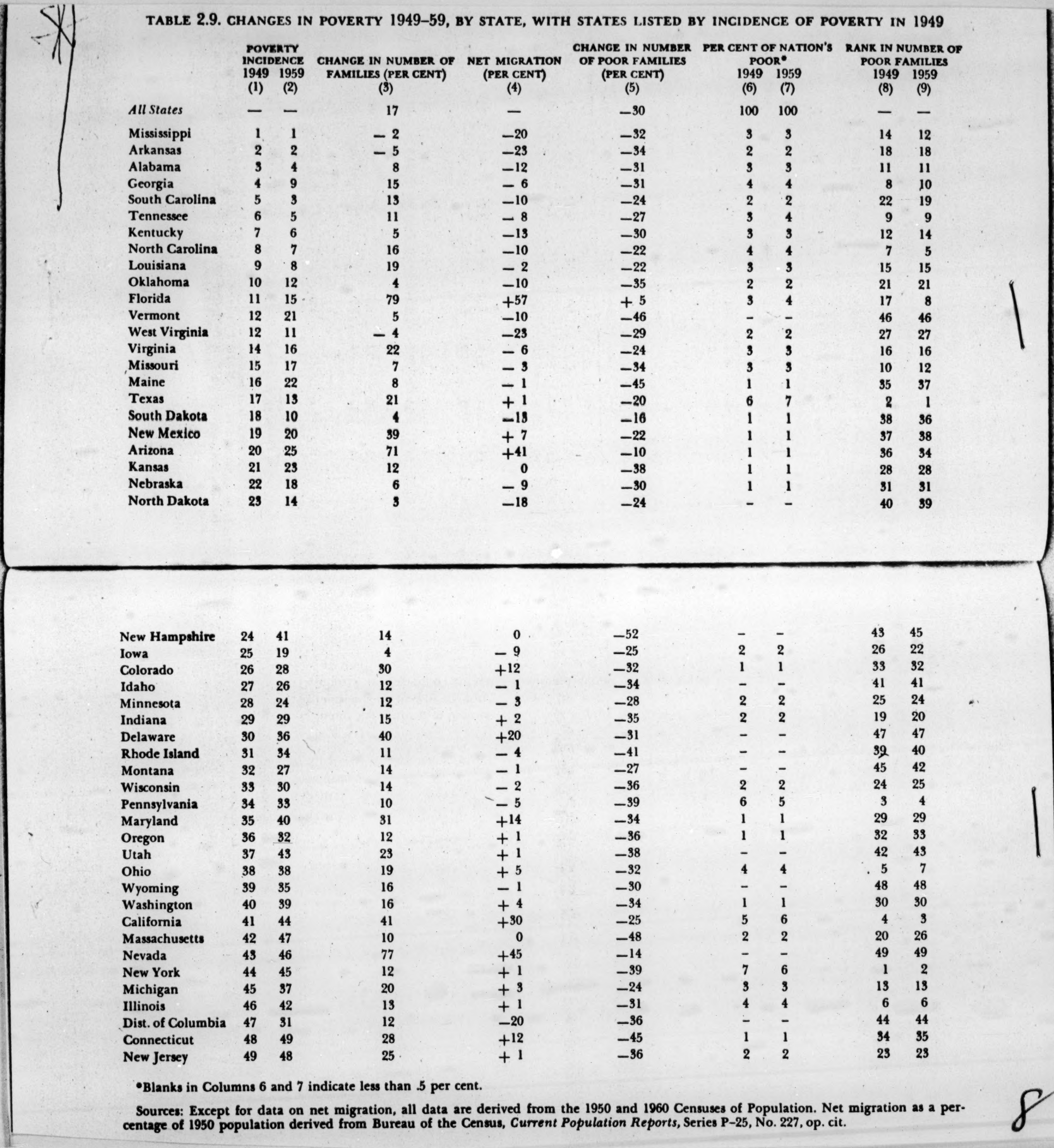

TABLE 2.9. CHANGES IN POVERTY 1949–59, BY STATE, WITH STATES LISTED BY INCIDENCE OF POVERTY IN 1949

| | POVERTY INCIDENCE | | CHANGE IN NUMBER OF FAMILIES (PER CENT) | NET MIGRATION (PER CENT) | CHANGE IN NUMBER OF POOR FAMILIES (PER CENT) | PER CENT OF NATION'S POOR* | | RANK IN NUMBER OF POOR FAMILIES | |
|---|---|---|---|---|---|---|---|---|---|
| | 1949 (1) | 1959 (2) | (3) | (4) | (5) | 1949 (6) | 1959 (7) | 1949 (8) | 1959 (9) |
| *All States* | — | — | 17 | — | –30 | 100 | 100 | — | — |
| Mississippi | 1 | 1 | – 2 | –20 | –32 | 3 | 3 | 14 | 12 |
| Arkansas | 2 | 2 | – 5 | –23 | –34 | 2 | 2 | 18 | 18 |
| Alabama | 3 | 4 | 8 | –12 | –31 | 3 | 3 | 11 | 11 |
| Georgia | 4 | 9 | 15 | – 6 | –31 | 4 | 4 | 8 | 10 |
| South Carolina | 5 | 3 | 13 | –10 | –24 | 2 | 2 | 22 | 19 |
| Tennessee | 6 | 5 | 11 | – 8 | –27 | 3 | 4 | 9 | 9 |
| Kentucky | 7 | 6 | 5 | –13 | –30 | 3 | 3 | 12 | 14 |
| North Carolina | 8 | 7 | 16 | –10 | –22 | 4 | 4 | 7 | 5 |
| Louisiana | 9 | 8 | 19 | – 2 | –22 | 3 | 3 | 15 | 15 |
| Oklahoma | 10 | 12 | 4 | –10 | –35 | 2 | 2 | 21 | 21 |
| Florida | 11 | 15 | 79 | +57 | + 5 | 3 | 4 | 17 | 8 |
| Vermont | 12 | 21 | 5 | –10 | –46 | – | – | 46 | 46 |
| West Virginia | 12 | 11 | – 4 | –23 | –29 | 2 | 2 | 27 | 27 |
| Virginia | 14 | 16 | 22 | – 6 | –24 | 3 | 3 | 16 | 16 |
| Missouri | 15 | 17 | 7 | – 3 | –34 | 3 | 3 | 10 | 12 |
| Maine | 16 | 22 | 8 | – 1 | –45 | 1 | 1 | 35 | 37 |
| Texas | 17 | 13 | 21 | + 1 | –20 | 6 | 7 | 2 | 1 |
| South Dakota | 18 | 10 | 4 | –13 | –16 | 1 | 1 | 38 | 36 |
| New Mexico | 19 | 20 | 39 | + 7 | –22 | 1 | 1 | 37 | 38 |
| Arizona | 20 | 25 | 71 | +41 | –10 | 1 | 1 | 36 | 34 |
| Kansas | 21 | 23 | 12 | 0 | –38 | 1 | 1 | 28 | 28 |
| Nebraska | 22 | 18 | 6 | – 9 | –30 | 1 | 1 | 31 | 31 |
| North Dakota | 23 | 14 | 3 | –18 | –24 | – | – | 40 | 39 |
| New Hampshire | 24 | 41 | 14 | 0 | –52 | – | – | 43 | 45 |
| Iowa | 25 | 19 | 4 | – 9 | –25 | 2 | 2 | 26 | 22 |
| Colorado | 26 | 28 | 30 | +12 | –32 | 1 | 1 | 33 | 32 |
| Idaho | 27 | 26 | 12 | – 1 | –34 | – | – | 41 | 41 |
| Minnesota | 28 | 24 | 12 | – 3 | –28 | 2 | 2 | 25 | 24 |
| Indiana | 29 | 29 | 15 | + 2 | –35 | 2 | 2 | 19 | 20 |
| Delaware | 30 | 36 | 40 | +20 | –31 | – | – | 47 | 47 |
| Rhode Island | 31 | 34 | 11 | – 4 | –41 | – | – | 39 | 40 |
| Montana | 32 | 27 | 14 | – 1 | –27 | – | – | 45 | 42 |
| Wisconsin | 33 | 30 | 14 | – 2 | –36 | 2 | 2 | 24 | 25 |
| Pennsylvania | 34 | 33 | 10 | – 5 | –39 | 6 | 5 | 3 | 4 |
| Maryland | 35 | 40 | 31 | +14 | –34 | 1 | 1 | 29 | 29 |
| Oregon | 36 | 32 | 12 | + 1 | –36 | 1 | 1 | 32 | 33 |
| Utah | 37 | 43 | 23 | + 1 | –38 | – | – | 42 | 43 |
| Ohio | 38 | 38 | 19 | + 5 | –32 | 4 | 4 | 5 | 7 |
| Wyoming | 39 | 35 | 16 | – 1 | –30 | – | – | 48 | 48 |
| Washington | 40 | 39 | 16 | + 4 | –34 | 1 | 1 | 30 | 30 |
| California | 41 | 44 | 41 | +30 | –25 | 5 | 6 | 4 | 3 |
| Massachusetts | 42 | 47 | 10 | 0 | –48 | 2 | 2 | 20 | 26 |
| Nevada | 43 | 46 | 77 | +45 | –14 | – | – | 49 | 49 |
| New York | 44 | 45 | 12 | + 1 | –39 | 7 | 6 | 1 | 2 |
| Michigan | 45 | 37 | 20 | + 3 | –24 | 3 | 3 | 13 | 13 |
| Illinois | 46 | 42 | 13 | + 1 | –31 | 4 | 4 | 6 | 6 |
| Dist. of Columbia | 47 | 31 | 12 | –20 | –36 | – | – | 44 | 44 |
| Connecticut | 48 | 49 | 28 | +12 | –45 | 1 | 1 | 34 | 35 |
| New Jersey | 49 | 48 | 25 | + 1 | –36 | 2 | 2 | 23 | 23 |

*Blanks in Columns 6 and 7 indicate less than .5 per cent.

Sources: Except for data on net migration, all data are derived from the 1950 and 1960 Censuses of Population. Net migration as a percentage of 1950 population derived from Bureau of the Census, *Current Population Reports,* Series P–25, No. 227, op. cit.

Moreover, there is no indication from states which have repealed residency statutes or the enforcement of whose statutes have been enjoined of any increase in the number of in-migrants seeking a welfare bounty.

Poor people move for a variety of reasons. Among the largest groups of the poor who have been the subject of population shifts is the Negro. "Throughout the 20th Century Riot Report," . . .

## ~~Chapter 6 / The Formation of the Racial Ghettos~~

### ~~MAJOR TRENDS IN NEGRO POPULATION~~

Throughout the 20th century, and particularly in the last three decades, the Negro population of the United States has been steadily moving from rural areas to urban, from South to North and West.

In 1910, 2.6 million Negroes lived in American cities—27 percent of the nation's Negro population of 9.8 million. . . .

Today, about 15 million Negro Americans live in metropolitan areas, or 69 percent of the Negro population of 21.5 million. In 1910, 800,000 Negroes—9 percent—lived outside the South. Now, almost 10 million, about 45 percent, live in the North or West. . . .

### ~~The Magnitude of This Migration~~

In 1910, 91 percent of the nation's 9.8 million Negroes lived in the South. Twenty-seven percent of American Negroes lived in cities of 2,500 persons or more, as compared to 48 percent of the nation's white population.

By 1966, the Negro population had increased to 21.5 million, and two significant geographic shifts had taken place. The proportion of Negroes living in the South had dropped to 55 percent and about 69 percent of all Negroes lived in metropolitan areas compared to 64 percent for whites. While the total Negro population more than doubled from 1910 to 1966, the number living in cities rose five-fold (from 2.6 million to 14.8 million) and the number outside the South rose eleven-fold (from 880,000 to 9.7 million).

Negro migration from the South began after the Civil War. By the turn of the century, sizeable Negro populations lived in many large Northern cities—Philadelphia, for example, had 63,400 Negro residents in 1900. The movement of Negroes out of the rural South accelerated during World War I, when floods and boll weevils hurt farming in the South, and the industrial demands of the war created thousands of new jobs for unskilled workers in the North. After the war, the shift to mechanized farming spurred the continuing movement of Negroes from rural Southern areas.

The Depression slowed this migratory flow, but World War II set it in motion again. More recently, continuing mechanization of agriculture and the expansion of industrial employment

4

in Northern and Western cities have served to sustain the movement of Negroes out of the South, although at a slightly lower rate.

| Period | Net Negro Out-migration from the South | Annual Average Rate |
|---|---|---|
| 1910-1920 | 454,000 | 45,400 |
| 1920-1930 | 749,000 | 74,900 |
| 1930-1940 | 348,000 | 34,800 |
| 1940-1950 | 1,597,000 | 159,700 |
| 1950-1960 | 1,457,000 | 145,700 |
| 1960-1966 | 613,000 | 102,000 |

From 1960 to 1963, annual Negro out-migration actually dropped to 78,000 but then rose to over 125,000 from 1963 to 1966.

~~Important Characteristics of this Migration~~

It is useful to recall that even the latest scale of Negro migration is relatively small when compared to the earlier waves of European immigrants. A total of 8.8 million immigrants entered the United States between 1901 and 1911, and another 5.7 million arrived during the following decade. Even during the years from 1960 through 1966, the 1.8 million immigrants from abroad vastly outnumbered the 613,000 Negroes who departed the South. In these same six years, California alone gained over 1.5 million new residents from internal shifts of American population.[*]

| Period | Percentage of Total North & West Negro Gain From Southern In-migration |
|---|---|
| 1940-1950 | 85.9% |
| 1950-1960 | 53.1% |
| 1960-1966 | 28.9% |

In other words, we have reached the point where the Negro populations of the North and West will continue to expand significantly even if migration from the South drops substantially.

[*] Rounds to 99.

The statistics of the "Riot Commission" report do not indicate a relationship between the incidence of residency requirements and migration during peak periods. The only reasons indicated by the "Riot Commission" for Negro migration are displacement of Negroes from Southern agriculture and increases in industrial employment in the North. On this subject Myrdal has said: ~~IN~~ in AMERICAN DILEMMA at pp. 188, 189, 191, 193, 194, 195, 196, 251:

> The Industrial Revolution, with all its connotation of modern progress and new opportunity, came to the South later than it did to the North, but it did come. Negroes, however, were not allowed to share in many of its fruits. The tradition persisted that Negroes could not operate machines, or at least this was the rationalization used to keep them from the new occupations. Negroes lost out in many of the skilled occupations they had formerly had.

> Not only did the Negro not share in the expanding opportunities in the South, but also the areas in which the Negroes lived declined from an economic standpoint. Most important was the deterioration of cotton production in the Black Belt of the Southeast.

> Schools for Negroes were generally improved but not so fast as for the whites and not nearly so fast as in the North. ~~The low~~

> several factors of change coincided and created a shock effect after 1915. In the South "white infiltration" into the types of work formerly monopolized by Negroes, the relative shift westward of cotton growing, and the ravages of the boll weevil made the Negro cotton farmer still worse off. Drought, too, made farming difficult in 1916 and 1917. The First World War stirred up people's minds and prepared them for change. The draft actually moved a great number of Negro men from their home communities. The draft of white workers, the stopping of immigration, and the general war prosperity forced Northern industry to turn actively to Negroes for new workers. There was a "push" in the South and there was a "pull" in the North, widening tremendously the already existing differences in opportunities for a Negro in the two regions. When factors of inertia were once overcome and the northward mass migration was started, the movement quickly took on momentum. A new pattern of behavior was set; a new hope in the possibilities in the North was created. Lines of communication between North and South were established.

> A desire to improve oneself economically by going North was, of course, a chief motive for migration.

> Allied with the desire for economic improvement was a desire for social improvement.

> Many Negroes also felt they could no longer tolerate their subordinate and restricted position.

> The general freedom, excitement, and anonymity of city life also attracted many rural Southern Negroes.

After the First World War many of the same influences continued, and Negroes kept up their migration northward. After a few years of depression, unprecedented prosperity brought a new demand for industrial goods. Immigration laws effectively kept out competitors to American labor, except for Mexicans and a few French-Canadians. Cotton production in the South Atlantic and East South Central states was still in the doldrums, though not so badly as during the War. Also important was the fact that a pattern of migration had been well started; fear and local ties were no longer so potent in deterring migration as they had been before the War.

Of all the calamities that have struck the rural Negro people in the South in recent decades—soil erosion, the infiltration of white tenants into plantation areas, the ravages of the boll weevil, the southwestern shift in cotton cultivation—none has had such grave consequences, or threatens to have such lasting effect, as the combination of world agricultural trends and federal agricultural policy initiated during the 'thirties.

The complexity of motivations behind migrations should be clear from the above. Admittedly, *some* people move to obtain higher welfare benefits, although this is true of none of the named plaintiffs before this Court or in other cases challenging residency requirements in xxxx lower courts.

Mrs. Harrell (*Harrell* v. *Tobriner*, supra), Mrs. Thompson (*Thompson* v. *Shapiro*, supra), Mrs. Ramos (*Ramos* v. *Health & Social Service Board*, 276 F. Supp. 474 *E.D.Wisc. 1967)) came to the respective jurisdictions to be near to or live with relatives. Mr. Green (*Green* v. *Dept. of Public Welfare of Delaware*, 270 F. Supp. 173 (D. Del. 1967), came to take a job as a construction laborer.

Thus the establishment of a presumption that all who require assistance come for the purpose of obtaining higher grants established an unreasonable classification as well as an undue hardship. *NAACP* v. *Button*, supra.

2. Cite facts and costs of assistance. Why one-year arbitrary time limit.

3. Estimating budget. -Business does it. They closed budget, states do it. They know immigration rates and they know from recent experiences that there will be no significant immigration.

Ec

rk fl

# Welfare Residency Laws

| 1st tier | political | 2nd tier |
|---|---|---|
| Mass. | Fla. | Conn |
| N.Y. | Miss | R.I. |
| N.J. | La. | Md. |
| Penna | Ark | N.C. |
| Ohio | Texas | Iowa |
| Mich | Minn. | Kansas |
| Ill. | | Wash |
| Mo. | | |
| Calif | | |
| D.C. | | |

1. Ill. = preference
2. Mich — 2nd preference
3. Calif — 3rd preference
4. Texas — 4th preference
5. Penna —
6. Ohio —

Minn. - 7th

Speak / to Brian Glick re

Fair hearing proceeding - challenge
im proper practices

380 US 89

Green v. Dept. of Public Welfare, 270 F. 173 (D. Del. 1967).

215 PE5-6101
Tom Gilhool,

Smith v. Reynolds, Civ. No. 42419 (E.D. Pa. Dec. 18, 1967). # 1138 – Harvey N. Schmidt 313 S. Juniper St
Phila, Pa.

Harrell et. al. v. ~~Tobriner et al.~~ Walter Washington, Civ. No. 1497 (D.D.C. Nov. 2, 1967). #1134 – Lawrence H. Silver – 202 628-9161
Neighborhood
416 5th St N.W.
Wash.

Mantell v. Dandridge, No. 18792 (D. Md. Nov. 27, 1967).

Ramos v. Health and Social Service Board, No. 67-C-329 (E.D. Wis. Nov. 20, 1967)
See 8 & 9 Wel. L. Bull.

2. Substitute Parent Policies

Smith v. King, Civ. No. 2495 - N (M.D. Ala., Nov. 8, 1967) the three-judge district court declared the Alabama welfare provisions denying aid to families with presumptive substitute parents unconstitutional as a denial of equal protection. Supreme Court will decide issue. King v. Smith, No. 949, 36 U.S.L.W. 3294 (Jan. 23, 1968).

McPherson v. Montgomery, Civ. Action No. 4659 (N.D. Calif. filed March 25, 1967) challenged as violative of due process and equal protection a denial of AFDC under Calif. Welfare and Institution Code § 11351 which presumes that a stepfather or "man assuming the role of spouse" is actually supporting family and has sufficient income to do so. /See also Robinson v. Board of Commissioners, Civ. No. 3399-66 (D.D.C. July 12, 1967) a similar case challenging the D.C. man-in-the-house

Purposes of S.S.A.

Vasey, Government & Social Welfare 140 (1958)
Unlike poor relief, "public assistance places much more emphasis on the dignity and rights of the individual recipients ... and attaches more importance to how people are treated and assisted."

Committee on Economic Security, Report to the President 44-45 (1935).
"While the standards of relief administration have been so greatly improved in these last years of stress and strain, the old poor laws remain on the statute books of nearly all states .... The Federal Government should insist as a condition of any grants-in-aid that standard relief practice shall be used ... to preserve the gains that have been made."

Fed standard
↓
Local [illegible] lawsuit inconsistent w. Fed nature

J. M. Wedemeyer & Percy Moore, "The American Welfare System, 54 ~~E.~~ Cal. Law Rev. 326, 347
"Perhaps the most important ~~as~~ contribution to a different area was the entrance of the was the entrance of the federal government into a role of continuing direct responsibility for the care of needy people. The law established the individual's immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources. Cracking four hundred years of complete relegation of the poor, to the largesse of their most immediate neighbors was bound to have psychological consequences as significant as the ~~physical~~, fiscal."
"Another important element was the series of

requirements imposed upon states as conditions for receiving federal grants-in-aid.

1. Freeze Program – to be delayed

Options (a) States pay out of own money w.o. reimbursement.
(b) Cut grants
(c) New restrictive rules.

Georgia wants to ~~x~~ establish~~ing~~ "waiting lists" – new child gets on when old gets off.

Louisiana is similar.

3/19 Hearing on Ga Rules

Sparer takes position:

~~(a)~~ 1) §402(a)(23) – Changes in budget to reflect "fully" "effect" "cost of living changes." First time SSA uses language defining needs. Thus when HEW says ~~states~~ can cut grants, they are wrong. – Effective July 1, 1969.

~~(b)~~ 2) Where state adopts narrower eligibility provision narrower than HEW, they must provide "equitable treatment" Compare: "equal protection" & Civ Rt Act ~~#~~ Title VI

H.E.W. has applied doctrine to Indian & illegitimate children.

⇐ Substitute parent is prime device as is mother's work provisions.

(1963 – Counsel's rejection of Mich amendment.
5/67 – Yale L.J. – on "Condition X" – History etc.)

2. Mother's Work provisions

1935 – Give mother a choice (HEW interpretation). But HEW never applied equitable treatment doctrine so some states require mothers to work.

D.C. When mother able to work, & day care available dropped off ~~cuts~~ after 3 mos whether she finds job or not. States define what mothers ~~are~~ appropriate now. Freeze exerts pressure on state to restrict.

"Child care" must be provided by states. States will try to burden mother

"Good cause" for non-employment – Secy of Labor – "Good cause" may mean working conditions – up to Secy of Labor

If Mother refuses work: she may be "counseled" for 60 days and kept on restricted payments. After 60 days if she refuses, she is removed.

Involuntary servitude argument – Choice of welfare or work violates 13th Amend. Sparer says NO unless criminal penalty attached. ~~[illegible]~~ [illegible] neglect proceedings are threatened where mother refuses work. Children forced to live on reduced grant because mother refused a job. State threatens "neglect," & this is ~~stronger~~ invol. servitude.

3. Confidentiality, Mother's Pension

Mother's P. = Motion broken. 1956 – Service in AFDC. 1967 – Neglect, violation of welf records – exchange with police, DA's – going back to old concepts. – Central Special enforcement of neglect statutes against AFDC raises due process problems. See Md. case.

4. AFDC – UP Program

Excludes man & family where he is eligible for unemp. ~~comp.~~ insurance no matter what level, raises equal protec.

2 Things to Remember - Not included in either draft:

1. Pa. has a 3 mo residency statute for employees on public works

2. All other Fed programs under SSA (except AFDC and Medical Assistance) allow a 5 yr (5 out of 9) residency requirement.

## Pt 1

## Public Assistance to the Poor Is One of The Oldest and Most Basic ~~Benefits~~ of ~~Provided By~~ Government Benefits.

Provision for the basic needs of the poor has been recognized as a duty of society since biblical times. ~~The Old Testament~~ says: [Citation that's all. Maybe a Ft Note]

~~The New Testament also emphasizes this obligation:~~

~~Here was~~

For four-hundred years this ~~obligation~~ need has been recognized by Anglo-American law as an obligation of temporal government. In 1572, Parliament passed a law (14 Elizabeth c 5) which was a landmark in the development of governmental assistance to the poor. It established ~~the~~ ~~principle~~ as national policy that the poor must be provided for through monies raised by public taxation. Riesenfeld, Stefan A.: The Formative Era of American Public Assistance Law, 43 Calif. L. Rev. 175, 180 et seq (1955) Revisions in 1597 (39 Elizabeth c, 3) and, more important, in 1601 (43 Eliz c 2) did much to establish the character of ~~public assistance~~ poor relief programs passed down through the American colonial period ~~down to the present~~. ten Broeck, Jacobus, "California's Dual System of Family Law: Its Origins Development, and Present Status," Part I, 16 Stanford L. Rev. 257, 258 (1964). Professor ten Broeck described the most salient feature of that period:

"The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide." (Ibid., at 262).

~~The obligation to guide~~

~~These measures were a recognition that~~

~~The inadequacy of ecclesiastical private and voluntary~~

~~It was, as well, a recognition that the very survival of many poor people hinged on a governmental solution~~

The ~~role~~ obligation of government to insure survival and the role of the judiciary in providing ~~that~~ relief to the poor is reflected in Gilbert's Act of 1782, summarized as follows:

(What's the quote?)

> "... Any applicant who could not get employment in the ~~usual~~ ordinary way should by the Poor Law Guardians -- without explaining how -- be provided with it and be fed and lodged until it could be given. Failing such relief, any justice of the peace was expressly empowered, after inquiry upon oath, to order 'some weekly or other relief'." Webb, S. & B., English Local Government. English Poor Law History, Vol. 1, Longmans Green & Co., Ltd. (1927) at 171.

The system, thus handed down to the American colonies had many infirmities. Administration and financing

(3)

were exclusively local. This caused the limitation of eligibility to those who had been born in a community or had long lived there.

> "Other poor persons were kept out or removed to the place of their settlement. . . From the community's point of view, he was bound to the place of his misfortune, restricted in his free movement and his personal opportunity. From society's point of view, the economy was fragmented, rendering more difficult the solution of economic problems that were regional and national. All of this is true today. ten Broek, ibid, at 565.

Indeed the indignities imposed on the pauper both in England & the colonies were ~~legion~~ ~~[illegible]~~ cruel in nature and legion in number. FN(1) Nonetheless, the basic importance of providing for the poor ~~and~~ the obligation of government in this regard were so firmly implanted that by the end of the 18th century, Blackstone was able to state in his Commentaries:

"P 7 + 8 of Lester's brief

")

~~The causes~~

---

FN(1) [5] "The need for or the actual receipt of assistance created . . . a veritable '*pauper statis*.' Thus the pauper was required to wear a badge with the letter P, a practice which was first given statutory sanction by the Pennsylvania Poor Law Amendment Act of 1718, 3 Pa. Stat. at L. 1712-1724, 221 (1896); he was required to be farmed out to the bidder at public auction, see, *e.g.*, Indiana Poor Law of 1807 . . . ; he could be thrown into the poor-house against his will, see, *e.g.*, Harrison v. Gilbert, 71 Conn. 724, 43 Atl. 190 (1899) (denying a writ of habeas corpus); he could and apparently still can, without violation of the constitutional guarantees, be forcibly removed to his place of settlement; Lovell v. Seeback, 45 Minn. 465, 48 N.W. 23 (1891); he lost the right to vote and still does under the constitution of Massachusetts, Mass. Const. Art. of Amendments III, and Texas, Tex. Const. Art. VI, Sec. 1." RIESENFELD & MAXWELL, MODERN SOCIAL LEGISLATION 709 (1950).

An indication of England's concern ~~for the~~ that her ~~establishment~~ colonial government's provide for the needs of the poor is reflected in the request of the Committee for Trade & Foreign Plantations of the English Privy Council in 1680 for information as to provisions made in Connecticut for relieving poor, decayed and impotent persons. Capen, ~~get cite~~ Historical Development of the Poor Law of Connecticut, (Columbia U. Press, 1905) at p. 22.

The ~~hi~~ ~~high priority~~ ~~which~~ importance of providing the necessities of life was discussed by Mr Justice Brewer before his elevation to the Supreme Court:

> "The relief of the poor -- the care of those who are unable to care for themselves is among the unquestioned objects of public duty. In obedience to the impulses of common humanity, it is everywhere so recognized." State ex rel. Griffith v. Osawkee Twp., 14 Kan 418, 421 (1875).

With the advent of the S.S.A. in 1935, the involvement of government in the provision of basic needs assumed new dimensions:

> "The law established the individual's immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources. Cracking four hundred years of complete relegation of the poor to the largesse of their most immediate neighbors was bound to have psychological consequences as significant as the ~~physical~~ fiscal.

single indent

Another important element was the series of requirements imposed upon states for receiving federal grants-in-aid." (Citing in footnote 19 requirements as of 1965). Wedemeyer, J. M. and Moore, Percy, "The American Welfare System," 54 California L. Rev. 326, 347 (1966). ~~See also Steward Machine Co. v. Davis, 301 U.S. 548 (1937)~~

double space

Indeed, numerous other requirements are specified in the regulations of the U.S. Department of Health, Education & Welfare. In any case, the participation of the national government was inevitable "... if the people were not to starve." Steward Machine Co. v. Davis, 301 U S 548, 586 (1937).

Whether one regards the benefits provided pursuant to the categorical assistance programs of the Social Security Act as "rights" or "privileges", they must be ~~regarded~~ recognized ~~[illegible]~~ as basic to human survival. Unlike many other benefits provided by government, the ~~benefits~~ Social Security Act programs provide only needs basic to life and ~~[illegible]~~ less than that. ~~speaks of "minimum standards of health and decency" which each state is required to determine [Cite]. Many states then provide only a percentage of that amount in their assistance programs, (e.g. Mississippi~~ ~~Pursuant to~~ under the Act, each state ~~determines~~ is required to establish "minimum standards of health & decency" but is only required to furnish assistance "as far as practicable under the conditions ~~of~~ in such state." Cf 42 USCA §602 & 606. ~~As a result~~. S.S.A. of 1935; ch 531; 49 Stat 620. As a result many states pay only a percentage of their own "minimum standard." [Ft Note: Examples of % paid.] The "survival" which these ~~benefits~~ payments permit is ~~most frequently~~ commonly one in which the beneficiaries are "ill housed, ill clothed and ill fed." ~~[Cite]~~ ~~Report~~ ~~U.S. Riot Co Report of the National Advisory Commission on Civil Disorders (N.Y. Times Co., 1968)~~

?

?

(?)

?

?

~~"This~~. "This sum [an average of about $36 monthly for each recipient of AFDC] is well below the poverty subsistence level under any standard. The National Advisory Council on Public Welfare has commented: 'The national average provides little more than half the amounts admittedly required by a family for subsistence; in some low-income states it is less than a quarter of that amount. The low public assistance payments contribute to the perpetuation of poverty and deprivation that extend into future generations.'" *Report of The National Advisory Commission on Civil Disorders* (N.Y. Times Co., 1968).

? Approximately 4.8 million people, including 3.6 million children, receive A.F.D.C. Ibid. at 457. All of the named plaintiffs would receive A.F.D.C.

? Without life none of the other rights and privileges accorded by the Constitution or state or federal statutes have value. [Cite?]

In determining whether conditions imposed on ~~rights~~ benefits or privileges ~~government benefits~~ are valid the Court has applied varying standards depending upon the benefit under consideration and the extent to which the condition imposed violates, inhibits, or deters fundamental rights. ~~When the condition burdens on inhibits free travel imposed by one-year residency laws is added to the importance of the benefit on which the~~ Here, the benefit is basic to survival, and the condition imposes a burden the right to travel freely. The test to be ~~[illegible]~~ applied therefore is whether the condition imposed is "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." McLaughlin v. Florida, 379 US 184, 196 (1964).

~~"The rational connection between~~:

Assuming, arguendo, the existence of a rational connection between ~~the~~ ~~regulation~~ a one year period of residence ~~and the reasons supporting it~~ as a prior condition to the receipt of public assistance and ~~a~~ some valid legislative purpose;

> "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." Thomas v. Collins, 323 US 516, 530 (1945).

Unlike a residency condition on the right to vote, such a condition on the receipt of ~~welfare~~ AFDC benefits goes directly to the most basic right – "the
? right to life ..." ~~inherent~~ named first in the due process ~~[Cite]~~ clauses of the 5th and 14th Amendments. [Cite] ~~One~~ People can live ~~without~~ for a year without a right to vote, but can they survive for a year without the minimal ~~quantities of food~~ amounts provided for food, clothing and shelter under the AFDC program? As the court in Green v. Dept. of Public Welfare of the State of Delaware, (270 F Supp 173 (D. Del 1967)) recognized (at 178):

> "...the need for food, clothing and lodging has an aspect of immediacy which differentiates it in kind from the right to vote."

~~In Aptheker, this Court applied to the~~ right of free travel

## Pt III

## Availability of AFDC Benefits May Not Be Encumbered With Unconstitutional Conditions

### (A) Availability of AFDC Benefits May Not Be Conditioned On Surrender of Basic Constitutional Rights Such As The Right To Travel.

In Point I we indicated the basic importance of welfare benefits to the survival of large numbers of people. We urged that this Court in judging the constitutionality of conditions ~~of~~, such as residency laws, apply a strict standard of necessity.

In Point II, we indicated that this Court has regarded the right to travel freely as a basic right not to be encumbered without a showing of stringent necessity ~~grave circumstances~~ such as flood, fire or pestilence ~~(Edwards v. S. California, supra at~~ ~~or the commission of crime~~ (Edwards v. California, supra at 185) or "the weightiest considerations of national security" (Zemel v. Rusk, 381 U.S. 1, 16 (1965)).

As in Sherbert v. Verner, 374 U.S. 398 (1963), the citizen is forced to choose between the exercise of basic rights (there, the free exercise of religion) and the forfeiture of government benefits. The citizen is subjected to ~~placed~~ "a choice between "the rock and the whirlpool." Frost & Frost Trucking Company v. Railroad Commission, 271 U.S. 583, 593 (1926).

This is precisely the predicament faced by AFDC recipients. The pressure to forego their right to travel is unmistakable. Denial of the basic benefits involved here derives solely from the exercise of the constitutionally protected right to travel.

The Court rejects distinctions based on the fact that the potential beneficiary is not prevented from exercising basic rights, but merely deterred or inhibited:

> "The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." Aptheker, supra at 516, citing NAACP v. Button 371 U.S. 415 (1963)

? Even a "chilling effect" on the exercise of basic rights is sufficient, Dombrowski v. Pfister, U.S. ( .

This is true ~~[illegible]~~ where the benefits derivable from the state are far less valuable ~~significant~~ than those in question here. Indeed, ~~[illegible]~~ even where the benefits are completely gratuitous and even ephemeral, they may, ~~nevertheless~~, not be subjected to conditions which "deter or inhibit" the exercise of

? basic rights. Speiser v. Randall, 357 U.S. 513 ( ) (a tax exemption conditioned on a loyalty oath).

The travels of the poor are already sufficiently encumbered by the facts of their poverty. As appears in detail hereafter, the poor travel for reasons far more basic than their affluent contemporaries. As will also ~~appears to~~ ~~[illegible]~~ indicate later, a one-year-residency condition on the receipt of AFDC benefits can not be justified by any overriding necessity for the inhibition of the right to travel freely.

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As The District Court in Thompson v. Shapiro noted, the burden ~~of~~ on free travel rejected in Edwards v California, supra, was ~~not direct, but~~ incidental, not direct. It was not the poor person who was prosecuted for entering the state, but the person who transported him.

~~Even beyond the right to travel, one-year residency limitations, are inconsistent with the national nature of the poverty problem of poverty (Edwards v. California, supra, (2) Opinion of Mr Justice Jackson), and the [illegible] purposes of the national system program devised for alleviating that problem. As Mr Justice Cardozo stated in 1937:~~

> ~~"It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare." Steward Machine Co. v Davis, supra at 586.~~

? It should be remembered that AFDC benefits are given only when the family has no alternative means of support, 42 U.S.C.A. ___. (In) ~~It thus is not a benefit which recipients can afford to do without. Therefore, for practical purposes, conditioning AFDC payments on residency, does not permit the recipient any choice at all.~~ AFDC families ~~they~~ cannot, in ~~most~~ many cases, choose to forego the benefit and exercise the liberty to travel. Practically speaking, conditioning welfare benefits on residency tends to tie the poor to the place of their misfortune ~~with~~ in the same ~~effect~~ manner as the English statutes regarding settlement & removal of the poor in the 18th Century. Those who do ~~escape and~~ ~~[illegible] the~~ succeed in moving out of unsatisfactory circumstances often find themselves in a shocking position:

> "1. Some American citizens are stateless, having lost residence in one place without gaining it in another, and ineligible for assistance anywhere. Some of these people can never become

alternative (McLaughlin v. Florida, 379 U.S. 184, 196 (1964); Shelton v. Tucker, 364 U.S. 479, 488 (1960); Schneider v. Irvington, 308 U.S. 147 (1939)).

~~Eligible~~

eligible because in certain states they cannot gain residence unless they are self-supporting.

2. Others are sent back to their place of residence even when their return is undesirable from the point of view of the individual or the community." Simons, Savilla M., "Social Welfare Forum - National Conference on Social Welfare, 1962" "Services to Uprooted and Unsettled Families."

No "subordinating interest which is compelling" (Bates v. City of Little Rock, 361 U.S. 516, 524 (1960)),

No overriding public purpose, to which there is no has been suggested here which ~~will~~ could justify ~~an~~ interference with their right to travel under these circumstances (See Point III-B infra).

~~Point~~ I

(Caps)

B. One-Year Residency Requirements In AFDC Cases ~~Violate~~ Deny "Equal Protection" of the Laws.

The denial of "equal protections of the laws inherent in one-year residency laws is so arbitrary and fundamental that it may be regarded in itself as ~~a denial~~ violative of the Due Process Clause of the Fifth Amendment as well as the "equal protection" clause of the Fourteenth Amendment. See Bolling v. Sharpe, 347 U.S. 497 (1954). ~~Hamilt~~

In ~~setting~~ ~~a one-yr~~ establishing one year of residency as a condition precedent to the receipt of AFDC benefits the legislatures of ~~the~~ Pa. & Conn., and Congress for the District of Columbia established a class, ~~of~~ of persons who are ineligible solely because they have resided in the jurisdiction for less than one-year. There is no question that any of the Plaintiffs-Respondents before the Court would be eligible but

(12)

for the residency requirement. Harrell v. Tobriner, F. Supp (1967); Thompson v. Shapiro, F. Supp (D.Conn 1967); Smith v. Reynolds, F. Supp. (E.D. Pa. 1967).

In assessing the validity of the classification by equal protection standards, it is not sufficient that all within the class of persons are treated alike. McLaughlin v. Florida, supra, at 190; Carrington v. Rash, ___ U.S. ___. ¶ In addition the one-year residency requirements ~~must~~ and the class they establish must be shown to be reasonable in light of the overall purpose of the AFDC program and the broader class ~~established~~ covered by it. The purpose of the A.F.D.C. program is set forth in the Social Security Act:

?

Gulf, C.&S. F. R. Co v. Ellis, 165 US 150, 155 (1897).

(Quote From Lester's p. 40-41)

[Then rest of p. 41 down to last ¶].

~~More specifically~~,

~~Furthermore~~,

In a recent paper, Savilla M. Simons analyzed the effect of residency laws on the urban poor:

> "In general, the in-migrants who come to the central city are poor, with little education and few skills. Sometimes they are illiterate, deprived culturally and socially. Frequently, they are forced to move by poverty, unemployment, or displacement by automation....
>
> The impoverished in-migrants in our cities are subjected to all the slum conditions and problems of urban life from which the resident poor suffer... But all these problems are greatly exaggerated and aggravated for the new arrival because of strangeness; his unfamiliarity with urban life, his tragic lack of preparedness for the conditions

→ he now faces, and the unfriendliness and sometimes outright rejection by local residents.

Consequently, the mobile poor especially need help and intensive services of various kinds upon their arrival. Paradoxically, very little aid of a constructive nature is available to them." Simons, Savilla M., "Social Work Services For The Urban Mobile Poor", Social Work Practice, National Conference on Social Welfare (1965) pp 164, 165.

Thus, it appears that residency laws run directly counter to the asserted purpose of the Social Security Act.

Even if for some reason the conflict between the residency requirement and the general statutory purposes is not fatal, the statute nonetheless violates "equal protection" standards.

Conditions establishing classes ~~such~~ as the one in question must at very least bear a "rational relation" to the purpose for which the classification is made. Rinaldi v. Yeager, 384 U.S. 305 (1966); Carrington v. Rash, supra. Where ~~basic or~~ fundamental rights are impaired, ~~or~~ such as the right to travel and the availability of basic needs (or either of them), a higher standard is applicable, be the right related to due process or equal protection.

> "Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld only if it is necessary, and not merely rationally related to the accomplishment of a permissible state policy." McLaughlin v. State of Florida, supra at 196.

Equal Protec

Carrington v. Rash, 380 U.S. 89, 96

"By forbidding a soldier ever to controvert the presumption of nonresidence, the Texas Constitution imposes an invidious discrimination in violation of the Fourteenth Amendment." (Equal protec.)

Establishing a class of servicemen not necessarily valid though curtail voting is OK.

---

Pa.
Con. Art VIII §1
Elections
State - 1 yr.
E.D. - 60 days

Divorce
23 Purdon's Penna. Statutes Annotated §16 - 1 year
§15 - Annulment - no period.
43 Purdon's §154 (Labor)
→ Public works laborers - residence of 90 days prior to employment. (1935)

School Child
24 Purd. §13-1302 - Free school privileges - affidavit only
Affidavit that child is resident.

Veteran's Compensation
51 Purd. §458.2. - Any individual who gave Pa or any specific place in it as his "place of residence" on entering military.

Conn.

Conn. Genl Statutes Annot.

Divorce

46 CGSA §~~46~~-15 — ~~One~~ 3 years.

Motor Vehicles Registration 14 CGSA §1

"Resident" = any person residing or doing business or working 6 mos of any year.

Electors

§ 9-12 — 6 months

---

DC. 1. D.C. Code.

Elections

1. D.C. C. 1102 — 1 year

Divorce 16 — 902 — 1 yr.

Annullment — 16-902 — time of action — (None)

However, Residence means domicile means:

(1) Physical Presence — Jones v. Jones 136A2d580

Stephenson v. Same, 134A2d105 (1957) (D.C. Mun App 1958)

(2) the intent to remain for an indefinite period of time. Jones v Jones. the Two essential elements have also been stated as being residence in fact coupled

Residence treated differently in tax (person tries foreign domicile) & divorce (person " to get in).

Police & Fire Dept.

4-132(a) — no time — within 12 miles of capitol (bldg) not even in D.C. but in "Wash., D. of C., metropolitan district" (even up to 20 miles - may be extended.

The statistics of the "Riot Commission" report do not indicate a relationship between the incidence of residency requirements and migration during peak periods. ~~Only the~~ The only ~~went~~ reasons indicated by the "Riot Commission" for Negro migration are displacement of Negroes from Southern agriculture and increases in industrial employment in the North. On this subject Myrdal has said:

Myrdal 188, 189, 191, 193, 194, 195, 196
251,

The complexity of motivations ~~producing~~ behind migrations should be clear from the above. Admittedly some people move to obtain higher welfare benefits, although this is true of none of the named plaintiffs before this Court or in other cases challenging residency requirements in lower courts. ~~Both~~ Mrs Harrell (Harrell v. Tobriner, supra), Mrs Thompson (Thompson v Shapiro, supra) and Mrs. Ramos (Ramos v. Health & Social Services Board, 276 F. Supp. 474 (E.D. Wisc, 1967)) came to the respective jurisdictions to be near to or live with relatives. ~~Fele~~ Mr Green ~~family (~~ (Green v. Dept. of Public Welfare of Delaware, 270 F. Supp 173 (D. Del, 1967), came to take a job as a construction laborer.

Thus the establishment of a presumption that all who require assistance come for the purpose of obtaining higher grants establishes an unreasonable classification as well as an undue hardship. NAACP v. Button, supra

2. Cite facts re costs of assistance. Why one year - arbitrary time limit.

3, Estimating budget, - Business does it. Other states do it. They know immigration rates & they know from recent experience that there will be no significant in-migration.

Myrdal
Other references –

Carter Goodrich and others
Migration and Economic Opportunity (1936)
pp. 125-126 on land erosion in the South
Footnote 6 Chapt 11

Social Welfare Forum - National Conference on Soc. Wel. 1962
"Services to Uprooted and Unsettled Families"
Savilla M. Simons

p. 174

"All evidence shows this ~~that~~ is not so [that people move into a state to get on relief.]. People move primarily to secure employment, to be with relatives, sometimes to find a more favorable climate, or in order to cope with emotional problems. California, Arizona, and Florida have the highest residence requirements permitted, but they continue to have the highest in-migration in the country. On the other hand, in New York State even before the Anti-Abuse Law went into effect when there was no legal residence requirement for public assistance less than 2 per cent of the cases receiving assistance had been in the state less than one year, even though New York has high assistance standards and is surrounded by states that make lower payments."

Why People Move

pp 170 - 171
178 - 179

---

Social Welfare Forum
'Nat'l Conf on Soc. Welfare 1964
" Human Consequences of Social Change"
Robert L. Barre

He points out the tendency to operate in units of interest rather than territorial ones

for ex. local → interstate agencies

Nat'l Problem

p. 43ff "The interests of society cannot be restricted by incongruous boundaries and popular recognition of common needs are relentlessly atrophying the vital functions of the subordinate jurisdictions, notwithstanding the recent growth of state and municipal employment and expenditure... ~~After all, the form~~ Nationwide recognition that the social interaction we call business had burst the bonds of subordinate jurisdictions came with the establishment of the five major Federal regulator agencies, such as the Interstate Commerce Commission.

Social Work Practice 1965
"Social Work Services for the Urban Mobile Poor" p. 165 Savilla M. Simons

p. 164 "In General, the in-migrants who come to the central city are poor, with little education and few skills. Sometimes they are illiterate, deprived culturally and socially. Frequently they are forced to move by poverty, unemployment, or displacement by automation. A high rate of mobility is found among families whose annual income is $3000 or less.* The rate of migration between March 1962 and Mar 1963 was about twice as high among unemployed as among employed workers.

* U.S. Dep. Comm. Bur. of Census. Pop. Characteristics series 15, p. 20

p. 165 ff "The impoverished in-migrants in our cities are subjected to all the slum conditions and problems of urban life from which the resident poor suffer... But all these problems are greatly exaggerated and aggravated for the new arrival because of strangeness, his unfamiliarity with urban life, his tragic lack of preparedness for the conditions he now faces, and the unfriendliness and sometimes outright rejection by local residents.

New arrivals

p.165ff. "Consequently, the mobile poor especially need help and intensive services of various kinds upon their arrival. Paradoxically, very little aid of a constructive nature is available to them."

p. 166 Xerox

" ~~We face, then, tremendously~~ .

easonably Related TO Any Bona Fide Legislative Purpose.

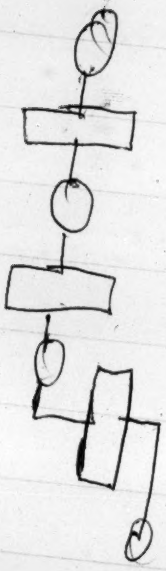
(a) The Legis Purpose Of Keeping Rolls Down Is Not Bona Fide.

~~(Right to Life)~~

(b) Even if Purpose is B.F. the Statute is Not Reasonably Related.
(See.

II Right TO Travel.

III



Unreasonable Limits on Statutory Entitlements
tot. Exclusion is arbitrary.

Purposes of SSA to protect poor people. 1 yr
exception is Arbitrary.
Fed imprimatur on program impresses Fed
Rts, ~~Travel~~ Rt to Fed. Benefits, Fed Requirements

Look up Debates on SSA re Right not
to starve in context of 1930's

I There is a Fed Right to Public A. - S.S.A. & 14th Am.
(a). Legislative Purposes - Fed Interest in Life,
(b) Due Process - Right to life. - Particularly children
Natural Rights -
(c) ~~Statutory entitlement.~~

SEE
Pt II

II The ~~Unreasonable~~ Limitations in Question is Unreasonable.
(a) Arbitrary because
(a) ~~Not~~. Not part of group at which benefit is ~~aimed~~ - not true.
(b) No overriding public interest - not reasonably related.
1. Children 2. People travel for other reasons.

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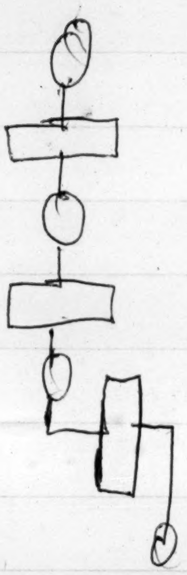
(See:

II Right TO Travel.

III

Unreasonable Limits on Statutory Entitlements test; Exclusion is arbitrary.



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Purposes of SSA to protect poor people. ~~E~~ 1 yr exception is Arbitrary.

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SEE Pt II ↳

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(a) ~~Fed~~. Not part of group at which benefit is aimed ~~-~~ not true.

(b) No overriding public interest - not reasonably related.

1. Children 2. People travel for other reasons.

III Right to Travel — I inherent in Fed citizenship

~~Whether or not~~ (a) Commerce (b) Priv. & immun. 14th A. ~~(c) Full faith & credit~~ (c) Art IV

For any reason or no reason

IV Equal Protect.

Modern society; Travel to jobs...

Eq Protect

1, Decline in Proportion of Farm Labor
Bureau of Census Report
N.Y. Times - 11/3/'67 Fri.

Farmers + Farm Workers - 1960-1966
25% decline { 16% - non-white - 1960
13% " " - 1966

"Social & Economic Conditions of Negroes in the U.S." - Bureau of Census.

Mechanization of Agriculture.

2. U of Mich article.

New Republic - last week.
Cloward + Piven.

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T&D/E75 0223

HEADLEY, GEORGE VS. LEARY, HOWARD et.al. POLICE COMMISSIONER of NEW YORK 1966
(CAB DRIVER'S LICENSE)

Box 37
Folder 11

rical Society Of Wisconsin

Please Retain Original Order

Supreme Court of the State of New York
County of New York

---

In the matter of
George Headley;
Petitioner,
v.
Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe, as Deputy Commissioner in charge of the Licenses Division, constituting the Police Department, Division of Licenses of the City of New York,
Respondents

---

The undersigned, Stephen M. Nagler, Esq., of counsel with the attorney of record for George Headley, Petitioner, affirms that he has read the attached transcript of the hearing of the Petitioner and that he knows the contents thereof; that based on the attached transcript, he believes the allegations stated in the petition to be true and accurate: that in his opinion the hearing determination and appeal were not based on substantial evidence or proper proof and that this determination should be annulled.

Stephen M. Nagler
Stephen M. Nagler, Esq.

Same heading at pg 1.

Supreme Court of the State of New York
County of New York

In the matter of
George Headley,
Petitioner,

v.

Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe as Deputy Commissioner in Charge of Licenses Division, Constituting the Police Department, Division of Licenses,
Respondent.

Petition

Index No ~~12779~~

To the Supreme Court of the State of New York:

The Petitioner, ~~George Headley,~~ Victoria Ortiz by ~~his~~ her attorney ~~Richard Harlow, Esq.~~ Carl Rachlin, Esq, respectfully shows to this Court and alleges:

1. Petitioner is a ~~taxi cab driver~~, license number 29542, duly issued by the Police Department, Division of Licenses, expiring on May 31, 1967.

2. Petitioner is and has been at all times concerned a resident of the State of New York, County of New York and City of New York, residing at 670 Water street.

3. The said Respondent, Police Department Division of Licenses, constituted Department pursuant to the provisions of the City Charter of the City of New York, ~~and~~ is responsible as the Division of Licenses of the Police Department of the City of New York for the issuance, revocation, and/or suspension of taxi cab operater's licenses and is authorized to bear complaints from the public regarding the behavior of such duly licensed taxi cab drivers.

4. Petitioner has held a taxi driver's license since approximately 1963, which license has been renewed by the Respondent.

5. This petition (and accompanying affidavit) is being presented to this Court in Support of an application for an order annulling the respondent's determination suspending the current license issued to the Petitioner, which license would have expired by its terms on May 31, 1967.

6. On or about January 24, 1964 a complaint was made by a Fredrick H. Wagner of 2380 Creston Ave, Bronx, New York, against the Petitioner, to the Police Department. On information and belief, the complainant did not press charges and the complaint was dismissed without prejudice. On information and belief the complainant elected to re-open the case and a hearing was held on or about May 16, 1966, at which time there were present at the hearing, a ~~Trent~~ Lieut. Nolan, acting as hearing officer, the Petitioner, and the Complainant.

7. At the hearing the Complainant testified that after he and his companions had "flagged down" the Petitioner's taxi cab and announced their destinahtion as the Bronx the Petitioner refused to take them there. This incident allegedly occurred at 142nd Street and Broadway in the Borough of Manhattan in the City of New York. The complainant brought no evidence to corroborate his testimony and the record reveals that he was confused as to both the time and date of the alleged incident.

8. The events surrounding the alleged refusal to honor the call and show his identification are unclear, vague, and not clarified by any testimony in the record which would lend credence to the complainants version of what took place.

9. The petitioner testified and the complainant admitted that the Petitioner's cab was mechanically inoperative. The Petitioner stated that he informed the complainant that the taxi was

inoperable.

10. There is not significant evidence to substantiate the complainants charge. The Complainant presented no evidence to support his charge and even admitted that the cab did not operate, and he gives no other explanation for the Petitioner's alleged refusal.

11. The hearing officer suspending the Petitioner's license for 14 days disposed of this matter capriciously, without proper regard for the weight or lack of weight of the evidence, and did the Petitioner a grave injustice by determining against him when the record shows no clear or sufficient evidence to support such a determination based on the facts as disclosed.

12. The Petitioner through the Division of Licenses duly appealed the determination of the hearing officer, Lieutenant Nolan and his appeal was denied on or about July 20, 1966

13. The evidence adduced at the said hearing in support of the charges made against the Petitioner as aforesaid was wholly insufficient to show that the Petitioner had violated the responsibilities of his license.

14. The determination made by the respondent herein in suspending the license was not made upon sufficient, legal, proper or competent evidence which was adduced at the hearing before it and is not supported by substantial evidence.

15. The determination made by the Respondent herein was wholly against the weight of evidence and there is no competent proof to authorize the said suspension.

16. The suspension was to take affect as of August 2, 1966, but was delayed by the Division of Licenses to Commence on August 9, 1966.

17. The action of the Respondent if enforced will cause substantial, serious and irreparable damage in loss of financial support to the Petitioner. This proceeding is being instituted by way of an order to show cause for the reason that a stay of

enforcement of the suspension is being sought herein due to the fact that the Petitioner will suffer irreparable damage and unless a stay is granted as requested until this Court finally determines this matter, Petitioner"s livelihood will be severely jeopardized, and that unless he can earn his support while this action is pending he will be placed in a position which will grevely threaten his present economic position.

18. No previous application for relief sought herein has been made.

19. The determination made herein before described was not made in a court action or special proceeding by a Court of record or by a judge of a Court of record, it was not a criminal matter; it finally determined the rights of the petitioner with respect fo the matter to be renewed.

WHEREFORE Petitioner prays that an order be granted herein annulling the determination of the Respondent dated May 16, 1966 suspending the Petitioner's license to operate a taxi cab effective August 9, 1966, and pending a review of the determination of the Respondent herein by this Court, an order be granted staying and restraining the Respondent, its agents and servants from interfering with the Petitioner's present legal right to pperate a taxi cab.

Dated New York

August 9, 1966

George Headley
Petitioner

Attorney for Petitioner

At a Special Term, Part II,
of the Supreme Court, held
in and for the County of
New York at the County Court
House on the ~~ninth~~ 30th day of
~~August,~~ November 1966

Present:
Hon. Fredrick Backer, Justice

Supreme Court of the State of New York
County of New York

---

IN THE MATTER OF THE APPLICATION OF
~~George Headley,~~ VICTORIA ORTIZ on behalf of herself
Petitioner, and her 2 minor children Maria Colturo[illegible] Colturo
FOR A JUDGMENT PURSUANT TO ARTICLE 78
of the CIVIL PRACTICE LAW AND RULES

{Caps}

Order to Show Cause ~~for Dismissal or Stay~~

Index No. 12719-66

- against -

See notes Insert I

~~Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe, as Deputy Commissioner in charge of Licenses Division, constituting the Police Department, Division of Licenses,~~
Respondents

---

¶ On reading and filing the affidavits of Stephen M. Nagler, Esq. and CARLOS LITWIN sworn to on the ~~9th~~ 30th day of ~~August,~~ November 1966 and upon the annexed petition of ~~George Headley~~ Victoria Ortiz (duly verified on the ~~9th~~ 30th day of ~~August,~~ November 1966), let the Respondents above named ~~or their attorney~~ show cause before this Court at a Special Term, Part ~~II~~ I thereof, to be held at the ~~County~~ Court House, 60 Centre ~~Street~~ New York, New York, on the ~~9th~~ 2nd day of ~~August,~~ December 1966, at ~~10~~ 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made pursuant to Rule 7803 ~~(4)~~ (1) and (3) of the Civil Practice Law and Rules directing the Respondents to furnish such emergency aid to petitioner and her children for food, shelter, clothing & other immediate needs for, pending an investigation ~~vacating and dismissing the determination of the said Respondents~~ as stated in the annexed petition, ~~or staying~~ in the alternative or staying and enjoining the said Respondents, ~~as the Police Department, Division of Licenses,~~ ~~and their attorneys~~ from enforcing or continuing the ~~taking any further steps or proceedings in enforcing the above mentioned determination~~ suspension or termination of public assistance to petitioners without a hearing until this order and annexed petition now before the Court have been finally determined and such other and further relief as to the Court may seem just and proper,

FB
JSC

ORDERED that ~~pending the determination of this motion and~~

~~annexed petition, the Respondents and their attorneys are hereby stayed from taking any further steps or proceedings in enforcing the determination above, the suspension of the Petitioner's taxi cab operator's license.~~

FB
JSC

Sufficient reason appearing therefor, let service of a ~~certified~~ copy of this order, + the petition and affidavits upon which it is granted, on the Respondents ~~or their attorney~~ ~~on or before~~ on the 30th day of ~~August,~~ November 1966 be deemed good and sufficient service~~, and let service of an answer and supporting affidavits, if any, on the attorney for the Petitioner on or before the 12th day of August, 1966, be deemed good and sufficient service~~.

~~ENTER~~

~~Enter.~~

ENTER

FB

Justice of the Supreme Court

Filed
Aug 9 1966
New York
County Clerk's Office

State of New York ) ss:
County of New York)

George Headley being duly sworn, deposes and says that he is the petitioner in the above entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therin stated to be on information and belief, and that as to these matters he believes it to be true.

George Headley
Petitioner

Sworn to before me this
9th day of August, 1966

Rita L. Carrington
RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

At a Special Term
Part II of the Supreme
Court held in and For the
County of New York at the
County Courthouse in the
City of New York on the
eighth day of August,1966

Present:
Hon. , Justice

Supreme Court of the State of New York
County of New York

George Headley,
Petitioner
v
Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe, as Deputy Commissioner in charge of Licenses Division

Order to
Show Cause

State of New YORK )
COUNTY OF NEW YORK ) ss.:

Upon reading and filing the annexed petition of George Headley sworn to on the eighth day of August,1966,it is ORDERED that therespondent above named show cause at a special term , Part II, of this court to be held in and for the County of New York at the County Court House in the City of New York, County of New York and State of New York at 10 o'clock in the forenoon of the day or as sson thereafter as co8unsel can be heard, why a judgement granting relief demanded in the petition should not be entered and why such other and further relief as to the court may seem just and proper should not be allowed the petitioner.

Sufficient reason appearing therefore, let person service of a certified copy of this order, the petition and affidavit upon which it granted on the respondent on or before the day of August,1966, be deemed good and sufficient service.

At a Special Term, Part II,
of the Supreme Court, held
in and for the County of
New York at the County Court
House on the ninth day of
August, 1966

Present:
Hon. Fredrick Backer, Justice

Supreme Court of the State of New York
County of New York

---

George Headley,
Petitioner,

v.

Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe, as Deputy Commissioner in charge of Licenses Division, constituting the Police Department, Division of Licenses,
Respondents

Order to Show Cause for Dismissal or Stay

Index No. 12719-66

---

On reading and filing the affidavit of Stephen M. Nagler, Esq. sworn to on the 9th day of August, 1966 and upon the annexed petition of George Headley (duly verified on the 9th day of August, 1966), let the Respondent above named or their attorney show cause before this Court at a Special Term, Part ~~II~~ I, thereof, to be held at the County Court House, New York, New York, on the ~~9th~~ 11th day of August, 1966, at 930 o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made pursuant to Rule 7803(4) of the Civil Practice Law and Rules vacating and dismissing the determination of the said Respondents as stated in the annexed petition, or staying and enjoining the said Respondents, as the Police Department, Division of Licenses, and their attorneys from taking any further steps or proceedings in enforcing the above mentioned determination until this order and annexed petition now before the Court have been finally determined and such other and further relief as to the Court may seem just and proper,

~~ORDERED that pending the determination of this motion and~~

7B/
JSC

FB/JSC

annexed petition, the Respondents and their attorneys are hereby stayed from taking any further steps or proceedings in enforcing the determination above, the suspension of the Petitioner's taxi cab operator's license.

Sufficient reason appearing therefor, let service of a certified copy of this order, the petition and affidavit upon which it is granted, on the Respondents ~~or their attorney~~ on ~~or before~~ the 9th day of August, 1966 be deemed good and sufficient service, and ~~let service of an answer and supporting affidavits, if any, on the attorney for the Petitioner on or before the 12th day of August, 1966, be deemed good and sufficient service~~.

~~Enter,~~

ENTER

FB

Justice of the Supreme Court

Filed
Aug 9, 1966
New York
County Clerk's Office

4/2C

Supreme Court of the State of New York
County of New York

In the matter of
George Headley,
Petitioner,

v.

Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe as Deputy Commissioner in Charge of Licenses Division, Constituting the Police Departmant, Division of Licenses,
Respondent.

**Petition**

Index No________

The Petitioner, George Headley, by his attorney Richard Marlow, Esq., respectfully shows to this Court and alleges:

1. Petitioner is a taxi cab driver, license number 29542, duly issued by the Police Department, Division of Licenses, expiring on May 31, 1967.

2. Petitioner is and has been at all times concerned a resident of the State of New York, County of New York and City of New York, residing at 670 Water street.

3. The said Respondent, Police Department Division of Licenses, constituted Department pursuant to the provisions of the City Charter of the City of New York, ~~and~~ is responsible as the Division of Licenses of the Police Department of the City of New York for the issuance, revocation, and/or suspension of taxi cab operator's licenses and is authorized to bear complaints from the public regarding the behavior of such duly licensed taxi cab drivers.

4. Petitioner has held a taxi driver's license since approximately 1963, which license has been renewed by the Respondent.

5. This petition (and accompanying affidavit) is being presented to this Court in Support of an application for an order annulling the respondent's determination suspending the current license issued to the Petitioner, which license would have expired by its terms on May 31, 1967.

6. On or about January 24, 1964 a complaint was made by a Fredrick H. Wagner of 2380 Creston Ave, Bronx, New York, against the Petitioner, to the Police Department. On information and belief, the complainant did not press charges and the complaint was dismissed without prejudice. On information and belief the complainant elected to re-open the case and a hearing was held on or about May 16, 1966, at which time there were present at the hearing, a ~~Trent~~ Lieut. Nolan, acting as hearing officer, the Petitioner, and the Complainant.

7. At the hearing the Complainant testified that after he and his companions had "flagged down" the Petitioner's taxi cab and announced their destinantion as the Bronx the Petitioner refused to take them there. This incident allegedly occurred at 142nd Street and Broadway in the Borough of Manhattan in the City of New York. The complainant brought no evidence to corroborate his testimony and the record reveals that he was confused as to both the time and date of the alleged incident.

8. The events surrounding the alleged refusal to honor the call and show his identification are unclear, vague, and not clarified by any testimony in the record which would lend credence to the complainants version of what took place.

9. The petitioner testified and the complainant admitted that the Petitioner's cab was mechanically inoperative. The Petitioner stated that he informed the complainant that the taxi was

inoperable.

10. There is not significant evidence to substantiate the complainants charge. The Complainant presented no evidence to support his charge and even admitted that the cab did not operate, and he gives no other explanation for the Petitioner's alleged refusal.

11. The hearing officer suspending the Petitioner's license for 14 days disposed of this matter capriciously, without proper regard for the weight or lack of weight of the evidence, and did the Petitioner a grave injustice by determining against him when the record shows no clear or sufficient evidence to support such a determination based on the facts as disclosed.

12. The Petitioner through the Division of Licenses duly appealed the determination of the hearing officer, Lieutenant Nolan and his appeal was denied on or about July 20, 1966

13. The evidence adduced at the said hearing in support of the charges made against the Petitioner as aforesaid was wholly insufficient to show that the Petitioner had violated the responsibilities of his license.

14. The determination made by the respondent herein in suspending the license was not made upon sufficient, legal, proper or competent evidence which was adduced at the hearing before it and is not supported by substantial evidence.

15. The determination made by the Respondent herein was wholly against the weight of evidence and there is no competent proof to authorize the said suspension.

16. The suspension was to take affect as of August 2, 1966, but was delayed by the Division of Licenses to Commence on August 9, 1966.

17. The action of the Respondent if enforced will cause substantial, serious and irreparable damage in loss of financial support to the Petitioner. This proceeding is being instituted by way of an order to show cause for the reason that a stay of

enforcement of the suspension is being sought herein due to the fact that the Petitioner will suffer irreparable damage and unless a stay is granted as requested until this Court finally determines this matter, Petitioner's livelihood will be severely jeopardized, and that unless he can earn his support while this action is pending he will be placed in a position which will grevely threaten his present economic position.

18. No previous application for relief sought herein has been made.

19. The determination made herein before described was not made in a court action or special proceeding by a Court of record or by a judge of a Court of record, it was not a criminal matter; it finally determined the rights of the petitioner with respect fo the matter to be renewed.

WHEREFORE Petitioner prays that an order be granted herein annulling the determination of the Respondent dated May 16, 1966 suspending the Petitioner's license to operate a taxi cab effective August 9, 1966, and pending a review of the determination of the Respondent herein by this Court, an order be granted staying and restraining the Respondent, its agents and servants from interfering with the Petitioner's present legal right to pperate a taxi cab.

Dated New York
August 9, 1966

George Headler
Petitioner

Attorney for Petitioner

State of New York } ss:
County of New York }

George Headley being duly sworn, deposes and says that he is the petitioner in the above entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therin stated to be on information and belief, and that as to these matters he believes it to be true.

George Headley
Petitioner

Sworn to before me this
9th day of August, 1966

Rita L. Carrington

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

Supreme Court of the State of New York
County of New York

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In the matter of
George Headley;
Petitioner,
v.
Howard Leary, as Police Commissioner of the City of New York, and Edward McCabe, as Deputy Commissioner in charge of the Licenses Division, constituting the Police Department, Division of Licenses of the City of New York,
Respondents

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The undersigned, Stephen M. Nagler, Esq., of counsel with the attorney of record for George Headley, Petitioner, affirms that he has read the attached transcript of the hearing of the Petitioner and that he knows the contents thereof; that based on the attached transcript, he believes the allegations stated in the petition to be true and accurate: that in his opinion the hearing determination and appeal were not based on substantial evidence or proper proof and that this determination should be annulled.

Stephen M. Nagler, Esq.

POLICE DEPARTMENT - CITY OF NEW YORK
DIVISION OF LICENSES
56 WORTH STREET
NEW YORK, N.Y. 10013

HEARING RE: GEORGE HEADLEY (HACK DRIVER #29542)
670 Water St.
New York, N.Y.

DATE: MAY 16, 1966

BEFORE: LT. FRANK NOLAN

COMPLAINT: JANUARY 24, 1964 - REFUSE CALL, REFUSE ID, ACTIONS.

APPEARANCES: FOR DEPARTMENT:

MR. FREDERICK H. WAGNER
2380 CRESTON AVE.
BRONX 68, N. Y.

Transcribed by Ptl. E. Jamison #19166, LDS

Mr. Frederick H. Wagner being duly sworn by Lt. Frank Nolan.

Lt. Nolan:

Would you state the circumstances leading up to your making a complaint against this driver.

Mr. Wagner:

Myself and another driver on the job and two girls flagged a cab, we got in and told him we wanted to go to the Bronx. He refused and said he wasn't going to the Bronx. We more or less told him well you got to take us to the Bronx were in the cab. He says I'm not going to take you any place. We got out of the cab, he pulled down a couple of blocks down by 138th St. left the cab double parked, turned it off and disappeared this "Ci Bonet" going for coffee. I walked across the street and used a police box and I called for a car. The car came with a patrolman in it and he wasn't in the restaurant, we walked up the street and he was hiding in the doorway and the cop asked him if that was his hack, at first he wouldn't even answer him then he told him yes, then we came back to the hack and myself and the patrolman and the cab driver got into the police car and the other cop got in the back with the other two passengers. When we got over to the 126th St. Station the hack didn't show up, then he says he had the key with him he forgot to give it to him or something. Then went back and we went to the cab and we had to push the cab to get it started, he said that he was having trouble with the cab all night and then we got the hack back to the 126th St. house and the only way I could get his hack license to file a complaint was off the desk sergeant or duty officer, I forget which it was, he wouldn't give it to me, he took the hack license with him when he took a walk out of the cab.

Lt. Nolan:

Q. This was at 142nd and Broadway you say?

A. Yea where we flagged the cab down.

Q. Where did he get out of the taxicab do you say?

A. Down by 138th St. and Broadway.

Q. You say your the person who called the police?

A. I called the police

Q. And who were you with on this?

A. The other driver his name is William Merner, I don't think he's with the company anymore, he's working at a different garage I'm not sure, and one girl's name was Margo from Medical Center and I don't know the other girls name.

Lt. Nolan to Headley:

Q. Do you wish to ask him any questions?

George Headley to Mr. Wagner:

Q. You say that when the police came we pushed the car?

A. Yes when we went down to the station house I had to come back to the cab it wouldn't start you were having trouble with it and you told the cop you were having trouble with it all night.

George Headley:

I can't take anybody when the car acts up I'm not a mechanic.

Mr. Wagner:

You should have told us that in the first place, you didn't say nothing, you just said you wern't going to the Bronx, you didn't have to go to the Bronx and that was that, you wasn't going to take us no place and I refused to get out of the cab.

George Headley:

Yea you refused to get out of the cab, but I couldn't carry the cab anywhere, but you saw what was wrong with the cab didn't you?

Mr. Wagner:

I didn't see there was nothing wrong with the cab, you drove on to 42nd St. should be 142nd St.?

Headley:

Did I drive it?

Wagner:

Yes you drove it from 142nd to 138th and then you got out and disappeared.

Headley:

The car wasn't driving at that time.

Wagner:

It drove you well.

Headley:

The car had cut out thats why when the police came he tried to get it started and he pushed it with the patrol car.

Wagner:

I didn't see it conk out, I just seen you behind the cab and disappexx and you were going for coffee.

Headley:

You said that I told you the car was giving trouble all night.

Wagner:

You didn't tell us that at all, you told the patrolman that after we come back from the station house, when we got down to the police car me you andthe other officer and the cab didn't show up then you told them you had the key with you, then we went back to the cab and we got in the cab you told them it wasn't going to start anyway, you were having trouble with the cab all night, but you didn't tell that to us when we got in the cab, for had you told us that we would of said well the hell with it no sense arguing about it, but you were so arrogant about it you didn't have to take us no place, that's what your there for, that's what your doing your hacking.

George B. Headley being duly sworn by Lt. Nolan.

Headley:

The cab cut out, I was having trouble with the cab all night, I called the garage and they told me to try to get downtown. The cab cut out and the people to the cab and said well, I says listen I can't carry you anyplace because the cab is giving trouble. The cab they got into and wouldn't get out so I eased out thinking a cab would pick up, wouldn't pick up next stop so I decided to make the garage a call, I took my license with me, back to the garage back to the place I called. The police came, the police told me to drive to the precinct, I said I can't move the cab. So he try and he couldn't move it either. So what you want me to do with a cab that stopped, put it on my back and carry it to the Bronx?

Lt. Nolan:

He says you went from 142nd St. to 138th St.

Headley:

The car was rolling slowly at the time, I was trying to get it started but it wouldn't pick up, it cut out completly, what you want me to do? He was they was arguing so much ...... ...... a few drinks of something, I tried to protest to them that the cab couldn't go any where, and when he got down town, then he called up and say his wife was in the cab, and I went to the 30th Pct. and turned it in. I don't know what he bring me here for.

Lt. Nolan:

Q. This was January 24th right?

A. Over two years ago. I came down here four times already.

Q. You had a call at 121st St. and 7th Ave. at 9:10?

A. It wasn't 9:30 it was way in the moring hour, it was way in themorning.

Q. What time would you say it was?

Wagner:

I don't recall the time it was, but I don't think it was that early.

Headley:

Headley:

It was later than that it was in the morning.

Lt. Nolan:

Q. What time you say this was about?

Headley:

A. It wasn't that time it was in the morning now I'm sure of that.

Q. Well what time in the morning, three o'clock in the morning? Would it be that late?

Wagner:
A. It could be around one or one-thirty.

Headley:

That was the last job that I had, cause I went to the garage straight from there.

Q. Where is your garage?

A. 21st St.

Q. 121st St.?

A. No 21st St.

Lt. Nolan:

Well according to your trip record for the 24th you started working at five o'clock and you took calls right up until 3:12 A.M.

Headley:

You have the trip record I don't have that was years ago.

Lt. Nolan:

For the 23rd you say its the day before you started at 4:55 and you took calls until 3:45 A.M.

Headley:

Well what day is he talking about?

The job was for a specific day isn't it?

**Lt. Nolan:**

He says the 24th.

**Headley:**

Alright well what happened on the 24th?

**Lt. Nolan:**

On the 24th you took a car out at five o'clock and you keep working until 3:12 A.M. according to your trip record.

**Headley:**

Alright so.

**Lt. Nolan:**

So if the car broke down, how were you able to keep working?

**Wagner:**

May I ask you a question? If the cab was no good and the car was running, what did he stop and pick up the fares for in the first place? Why didn't he tell us before we ever got in I'm not working the cabs not working I'm going to bring it in?

**Headley:**

Because when you stopped me the car cut out right there and then, why ..... you all get in the cab. It wasn't four blocks, it was about two blocks.

**Wagner:**

From 142nd to 138th is four blocks.

**Headley:**

And it was in the morning the time was not any, 9:30 it was in the morning and they went from there straight to the precinct and to the garage. You can call the 20th Pct. and find out what time I turn in the, turn in the wallet that was found in the car there cause they went from the garage from there they walk straight over, you can find out approximately what time it was.

**Lt. Nolan:**

From the time you went into the garage.

**Headley:**

When they stopped me between that time what happened after they stopped me, we went to the precinct and from the precinct I went to the garage and from the garage I went to the precinct downtown, so all that took place within about one hour. So if you call the precinct on that date when I turn in the money what time it was. I didn't work anymore after that cause that was I had the (unaudible) before that. It was in the morning it wasn't any 9:30. I can't see what they arguing about because the car broke down I told them I couldn't ake them anywhere, and the police came and gave me a push.

**Lt. Nolan:**

The thing is he says you never mentioned anything about being broke down that you just said you didn't want to take them.

**Headley:**

He doesn't even have a witness to prove that I did, I told him that, and the proof is that the car couldn't move the police car had to come.

**Lt. Nolan:**

Well you don't have a witness either that says that you told them that.

**Headley:**

No but I got, he said the the police push the car, the will tell you that and I tell you that too, that the car was broken down.

**Lt. Nolan:**

They pushed it to get it started.

Headley:

I couldn't get it started and the policeman couldn't get it started.

Lt. Nolan:

Well how could you ride them from 142nd to 138th?

Headley:

I couldn't drive from 142nd it was two blocks.

Wagner:

The Si Bonet restaurant is between 137th and 138th streets the call box is right across the street on the opposite side of Broadway and that's on 138th St.

Headley:

But the car cut out, what you want me to do, put it on my back and carry you to the Bronx?

Wagner:

I don't care what you do, just don't get so bloody nasty about it if you'd of said so in the first place. When you found out I wanted to go to the Bronx you didn't want to know from nothing. You said you wern't going to the Bronx, you didn't have to take us and you wern't, and then you go and you hide on the cop too. And if you call the patrolman you'll see what the patrolman has to say, the two of them were steaming. Your attitude if they had asked you if that was your cab you wouldn't even answer them you were hiding in the doorway, we had to go look for you walking up the street in the rain.

Headley:

I was ring for the garage shop to come to put the car up.

Lt. Nolan:

Did you bareak down early that night too?

Headley: Yea.

Lt. Nolan:

On that same night? How many times did you break down?

Headley:

The car was cutting out regularly, the battery was each time I tried to start the battery was getting weaker and weaker, by that time the battery was dead, I couldn't start the car anymore.

Lt. Nolan:

This was a Friday right?

Headley:

I don't know what night it was.

Wagner:

It was either a Friday or Saturday.

Lt. Nolan:

According to your letter at the time it was on a Friday, Friday Jan. 24th. According to your trip record you had no breakdown on the 24th but you had one on the 25th

Headley:

It was no breakdown.

Lt. Nolan:

Excuse me?

Headley:

Wasn't even no breakdown/

Lt. Nolan:

Well you didn't have no entry on the trip record that you broke down at anytime on the 24th, right.

Headley:

You mean that the car that I had to wait for the garage send a car to send a repair out to me, no, I don't know if that is the case but many times the car wouldn't start and the passengers would wait two minutes to get it start and she start off, but to wait for the I thought I would try to get it staryed before they come because they take two three or four hours to come and I'm there a long time.

Lt. Nolan:

But this man says you said you refused to go to the Bronx and nobody could make you go to the Bronx.

Headley:

That's what he say.

Lt. Nolan:

Q. Did you have one call for the Bronx?

A. Right.

Q. That day at all?

A. You have the trip card it was two years ago, I don't you can look there and see what else calls to the Bronx.

Lt. Nolan:

What I don't understand about this is your trip record indicates what your calls steady throughout the night til three something in the morning. Could it have been after three o'clock in the morning when this occurred?

Wagner:

Its possible I don't recall the time exactly, I wouldn't swear that it was earlier or that it was about that time. I can't understand a man say that he's having trouble with a car all night what he's doing out with it. If it's mot operating properly and you couldn't get it fixed why didn't bring it in. Its quite convéant to have a breakdown because you don't want to go to the Bronx.

Headley:

I caused a breakdown?

Wagner:

I don't know I'm not a mechanic.

Headley:

What did you saw, did you see me open and do something to it?

Lt. Nolan:

I find the charges sustained, if you wish to appeal you may. I'll give you fourteen days.

Police Justice's Court
VILLAGE OF FLORAL PARK
Nassau County, New York

Louis S. Backiel
Police Justice

July 5, 1966

COPY

Mr. Nelson Glover
350 Roquette Avenue
So. Floral Park, NY

Dear Sir:

Please be advised that your case has been placed on the calendar of this Court which will be held on Monday, July 11, 1966 at 7:30 P.M., in the Police Justice's Court.

It will be necessary that you appear at that said date and time.

Very truly yours,

/s/

LOUIS S. BACKIEL
POLICE JUSTICE

LSB/dem

**Nelson Glover**
350 Roquette Avenue
South Floral Park, New York

August 9, 1966

The New York State Commission
for Human Rights
244 Mineola Boulevard
Mineola, New York

Attn.: Mr. John Potter

Dear Mr. Potter:

In addition to matters I have brought to your attention more formally, I feel the Commission might be interested in a more "personal" facet of my appearance in the Floral Park Traffic Court on July 11th.

For reasons of employment, I was unable to attend the Court on the initially scheduled date. The issuing officer had advised me that I could mail in my license and the summons for disposition. I think you might readily understand my hesitation in doing this, in view of my complaint on the "'N' for Negro" entry on the summons. After I had received no reply from the Commission on the June 14th complaint call regarding the legality of the "race" listing on the summons, I did respond to the July 5th order (copy enclosed) from Police Justice Backiel to appear on the July 11th date.

The courtroom, by Court acknowledgment, was warm (and, I would like to add, poorly ventilated and somewhat stifling). At the time of the fining, I had $13.00 with me in cash. The Court refused to accept my personal check for the remaining $2.00 amount without explanation, and I was put under arrest (allowed two phone calls to the outside while being escorted by police guard). This resulted in an expensive (by my "occupation"/income/responsibilities standards!) cab trip by my wife with my two young children (one of whom was ill at the time) to the Court to bring the $2.00 in cash!

I hope you and other personnel of the Commission alike might share the personal indignation and puzzlement at this whole system of rank discrimination, unethicalities, humiliations, and police-state tactics, and especially its existence in this area.

Very truly yours,

Nelson Glover

COPY

COPY

OFFICE OF THE EXECUTIVE
Nassau County Executive Building
Mineola, New York

July 25, 1966

Mr. Nelson Glover
350 Roquette Avenue
South Floral Park, New York

Dear Mr. Glover:

Mr. Nickerson has asked me to reply to your letter of July 16, 1966, with respect to the ticket you received in Floral Park.

We have received a copy of the letter that Mayor Joseph Driscoll sent to you in response to your letter of the 16th. As his letter indicates, the Floral Park Police Force is in charge of the area in question and the county would have no jurisdiction in the specifics of the matter you refer to.

I hope that all your questions were answered satisfactorily by Mayor Driscoll's letter.

Sincerely yours,

Daniel T. Sweeney
Deputy County Executive

DTS:det
CC: Mr. Farrell Jones
Police Department

Nelson Glover
350 Roquette Avenue
South Floral Park, New York

August 9, 1966

COPY

The Honorable Eugene H. Nickerson
County Executive
County Executive Building
1 West Street
Mineola, New York

Dear Mr. Nickerson:

I am in receipt of Mr. Sweeney's reply letter in connection with my complaint filed with the New York State Commission for Human Rights against the Village of Floral Park Police Department and Traffic Court.

As described in the enclosed correspondence, Mayor Driscoll's letter in no way responds to or answers the specifics of my complaint.

I must say that I find it quite regrettable and disappointing that you and your office do not share alarm over this traversty and flagrant disservice to the citizenry of Nassau County that I have described.

Very truly yours,

Nelson Glover

Encl.: 1

CC:

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
504 CENTRAL AVENUE
ALBANY 1, NEW YORK

July 27, 1966

Mr. Nelson Glover
350 Roquette Avenue
South Floral Park, New York

COPY

Dear Mr. Glover:

Thank you for sending me copies of your correspondence with Messrs. Potter and Nickerson.

With respect to Mr. Potter's letter, you will be interested to know the following: The Commissioner of Motor Vehicles has, for some years, had the authority to prescribe the form of the so-called "Uniform Summons and Complaint." This is the slip which the officer makes out when he stops a motorist for a triffic violation. This State-approved Uniform Summons and Complaint, of course, contains no reference to race.

Until this year, however, certain municipalities, among them Floral Park, have been exempted from using the State-approved forms. The exemption had not been made because of the race matter, but may possibly have been a by-product of this exemption. At any rate, by action of the 1966 Legislature and at Governor Rockefeller's urging, the State-approved form will soon be in use everywhere in the State, without exception.

With respect to your letter to Mr. Nickerson, you are obviously aware that my function is that of an administrator, not an enforcement official. This complaint is not unlike many others we receive. Enforcement practices and policies are, of course, a matter for each local police department to establish. I do, however, take note of your letter to Mr. Nickerson and thank you for your courtesy in sending me a copy.

Sincerely,

WILLIAM S. HULTS
Commissioner

WSH/p

COPY

Nelson Glover
350 Roquette Avenue
South Floral Park, New York

August 9, 1966

The Honorable William S. Hults
Commissioner
New York State Department of Motor Vehicles
504 Central Avenue
Albany 1, New York

Dear Commissioner Hults:

Thank you for your courteous and prompt response letter to copies of my complaint correspondences forwarded to you. Your explanations are both interesting and enlightening. However, certain real questions do remain as to what use the Village of Floral Park Police Department and Traffic Court make of recorded information on "race" and "occupation," in the issuance and processing of traffic summonses.

I am sure, too, that even casual observation of the described stop sign continues to raise real and rightful questions regarding its characteristics and operation, per the enclosed and earlier correspondences.

As regards my efforts and inability to obtain information from the "Manual of Uniform Traffic Control Devices," and discussed in my 8/9 letter to Mr. Potter: Is this material in any way "classified"? If not, could it not be made more readily available to the public in local libraries, Motor Vehicle and Traffic offices, etc.

Thanks again for attention given these matters.

Sincerely,

Nelson Glover

Encl.:

CC;

THE CITY OF NEW YORK
Office of the Mayor
New York, N. Y. 10007

July 28, 1966

Mr. Nelson Glover
350 Roquette Ave.
So. Floral Pk, N.Y.

Dear Mr. Glover,

The subject of your letter is handled for the City by the Police Department.

I am asking them to contact you directly on this matter which will have their prompt attention.

Thank you for taking the time to write.

Sincerely,

/s/ John V. Lindsay

Mayor

COPY

U. F. 49-

**POLICE DEPARTMENT**
**CITY OF NEW YORK**
**NEW YORK 13, N. Y.**
DIVISION OF LICENSES
56 WORTH STREET
NEW YORK, N.Y. 10013

July 29th, 1966.

Mr. George B. Headley
670 Water Street
New York, N. Y. # 10002

Dear Sir:

Reference is made to your letter of July 25th, 1966, requesting a transcript of the hearing held by Lieutenant Frank Nolan on May 16th, 1966, which you state you intend to use for court action.

A review of the tape resulted in the estimation that this transcript will be ten (10) pages. The cost is ($1.00) per page and such transcript will be prepared upon the receipt of a check or money order from you in the amount of ten-dollars ($10.00) made payable to the Police Department, City of New York.

Be aware that mere intention to institute court action does not estop this Division from suspending your license.

You are directed to surrender your credentials to the Hack Driver's Bureau of this Division on or before Monday, August 8th, 1966, for a period of thirteen (13) days. In the absence of a court order directing a further stay, failure to comply with this effective date will result in the stripping of your credentials forthwith.

Very truly yours,

Joseph N. Delaney

Joseph N. Delaney
Captain in Command.

JND:jf

877-0353

This is the
only letter now
in my possession

Headley

EDUCATION EFFICIENCY ECONOMY

**National Association of Power Engineers, Inc.**

OFFICE OF STATE DEPUTY

ORGANIZED OCT. 25, 1882
AS THE N. A. S. E.
INC. STATE NEW YORK, FEB. 23, 1893
INC. STATE NEW YORK, FEB. 14, 1928
AS THE N. A. P. E.

Copy

Mr. George H. Fowler
Chairman
State Commission for Human Rights

New-York Aug. 5th 1966.

Re - W. Walti
Sasom Broadmoor Corp
Case No. C-12542-65

Dear Mr. Fowler

About five months ago I received a Determination after Investigation, dated March 9th 1966. I must express my disappointment at the dismissal of this case.

At the time of the first hearing, your Commissioner warned Mr. Katz that she was aware of his using discrimination, that if she heard anything further about this she would proceed against him. However those statements where not in the "Determination" and same does not contain every thing that went on at that hearing. Under these circumstances you do not have a complete picture of the situation. However the Commissioner ordering a review of this case withing three Months in order to determine what new developments have taken place at the Hotel. It is now five months and this case has not been reviewed.

To keep you further informed, I wish to let you know that there was onley one Negro man, who managed to get an apartment 4-M. from a Mr. Heiss at the Broadmoor Hotel on a sublease from this white tenant, also one Negro girl who rented a room from a white Nurse tenant who has a four room Apartment. At present there are at least twenty empty apartments, evidently Mr. Katz is not renting them to negro people, or they would have been taken by now especially sinc this neighborhood is well populated with Negro-People.

When he advertises his vacancies, he puts his ads in the Aufbau and Statszeitung, so it is evident he is not trying to encourage negro tenancy.

I also wish to call your attention to the fact that the Federal Government has given Mr Katz an F.H Loan of

1.200.000 Dollars under those circumstances I do not think Mr Katz is giving the Negro people an even break.

The following is a list of nine Transient Hotel in the viecinity of the Broadmoor Hotel (withing two square blocks) in which I showe the percentage of Negro tenants those are all 200 Units or more.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Hotel | Midway | 100 St | and | Broadway | 65% | Negro | tenants |
| " | Whitehall | 100 St | and | " | 80% | " | " |
| " | Front | 101 St | off | " | 60% | " | " |
| " | Jefferson | 101 St | and | " | 50% | " | " |
| " | Broadway | 101 St | and | " | 80% | " | " |
| " | Broadmoor | 102 St | and | " | 1/4 of 1% | " | " |
| " | Marseille | 103 St | and | " | 85% | " | " |
| " | Alexandria | 103 St | off | " | 60% | " | " |
| " | Regent | 104 St | and | " | 65% | " | " |

Mr Katz has a building on West 72 St. Hotel McArthur There were all Negroes tenants befor he purchased it after he renovated same 2 years ago one negro a doctor, who had a lease remained.

The above will give you an insight on how integration is practised in his buildings

Yours Truly
CWW.

Nelson Glover
350 Roquette Avenue
South Floral Park, New York

August 9, 1966

Congress on Racial Equality
Legal Department
150 Nassau Street
New York 10038, New York

Attn.: Mr. Stanley A. Krieger

Dear Mr. Krieger:

Thanks for your letter of July 19th and your expressed interest in the complaint filed with NYSCHR against the Village of Floral Park Police Department and Traffic Court.

I am enclosing correspondences received, per your request, and would greatly appreciate any further technical assistance you might be able to offer. Could, especially the matter of "race" be in violation of Federal statutes?

Very truly yours,

Nelson Glover

Nelson Glover

Nelson Glover
350 Roquette Avenue
South Floral Park, New York

August 9, 1966

The New York State Commission
for Human Rights
244 Mineola Boulevard
Mineola, New York

Attn.: Mr. John Potter

Dear Mr. Potter:

COPY

I am forwarding herewith copies of materials relevant to my June 14th complaint against the Police Department and Traffic Court of the Village of Floral Park, New York.

As I have stated in my reply letter to him, Mayor Driscoll's letter does not respond to (and hence does not answer) the specific charges of my complaint that, in summary: (1) the issued summons of June 10th used by his Department and the Floral Park Court contained a recorded reference to "race," and the issuing officer demanded and recorded in my presence information on my "occupation." My claim being that such material should not be relevant to matters of dispositions on traffic violations and penalties, that their recording biased any and all Traffic Department and Court decisions in the case, and that such actions would appear to be especially contrary to existing laws in New York State prohibiting racial discrimination; and (2) the described school stop sign, in its design and operation, invites violations and issuance of summonses by Floral Park police officers acting in a manner described in my July 16th correspondence, that it does not provide effective safety and protection for motorist and pedestrians against accidents, but that it does result in the levying of unfair, excessive, and inequitable fines on motorists, improper recordings on licenses, etc., also discussed in my July 17th complaint letter to you. (Incidentally, the additional signs referred to in Mayor Driscoll's letter are not "several hundred feet" from the described hinged contraption, but are a much shorter 75-85 feet and simply add to the perplexity created for motorists, whom we've observed--even since receipt of Mayor Driscoll's letter--slamming on brakes at the same intersection or, in innocent confusion, passing through this "trap" arrangement without stopping.)

I have tried unsuccessfully to gain access to the material referred to in Mayor Driscoll's letter said to be found in the "Manual of Uniform Traffic Control Devices of the State of New York," which accounts, in part, for the delay in this mailing. I was referred to the Albany Office by several local State and City Traffic Offices for its content. Two of these offices are referred to in the Albany photostated form letter reply from Commissioner Hults. For example, the South Floral Park Village Clerk does not have a copy of the Manual, etc. I'm, at least, sure that this material is not easily available to the public subjected to its regulatory content, a matter I have brought to the attention of Commissioner Hults. Of course, I continue to be interested in the extent to which the quoted Manual material contradicts or supports my claims regarding the sign's characteristics and operation.

COPY

I am also enclosing copies of reply letters from Commissioner Hults, Mayor Lindsay, and others which the Commission might find of interest and/or assistance in making a just and proper disposition of these complaint matters.

Very truly yours,

Nelson Glover

Encl.:

CC:

COPY

INCORPORATED VILLAGE OF FLORAL PARK

One Floral Boulevard, Floral Park, N.Y. • Telephone 516-354-6200

COPY

July 22, 1966

Mr. Nelson Glover
350 Roquette Avenue
South Floral Park, New York

Dear Sir:

Thank you for your courtesy in forwarding to me copies of your correspondence to the New York City Commission for Human Rights and the Hon. Eugene H. Nickerson (dated July 16, 1966), regarding a summons for a traffic violation issued here in Floral Park by a member of the Floral Park Police Department.

The Stop Sign referred to at the intersection of Zinnia and Plainfield Avenue is constructed and located in conformance with Section 207.5 of the Manual of Uniform Traffic Control Devices of the State of New York. This particular sign is as described in Section 200.16, Subdivision 7 of the aforesaid manual. This particular type of sign has been in this location for a period of at least three years and this intersection has been controlled by stop signs since the building of Floral Park Memorial High School in the next block.

This type of sign is used so that the intersection can be controlled on a "stop sign basis" when necessary. You are correct in indicating that the sign can be and is in fact opened and closed to either control the intersection for school crossing or allow free movement of traffic during the hours when school crossing control is not necessary. I note that your particular summons was issued on June 10th, a Friday afternoon, at 2:50 PM which, obviously, is a time when it is necessary for the crossing to be controlled. I should also point out that there is a sign preceding this stop sign by several hundred feet, in both north and southbound directions, which says "Stop Ahead School Days" to indicate to the motorist the traffic condition he is faced with.

I must take exception to your statement that this is a "trap sign". I am sure that you, as a parent of two children, will agree with the necessity for controlling such a crossing when there is a combination junior and senior high school, with upwards of 1400 pupils, in the next block. In addition, our instances of traffic violations and/or pedestrian accidents at this crossing do not indicate that "this sign is not functioning effectively" but rather that it is serving the purpose for which it was intended.

While the court and the administration of justice are not in my province, I can only comment based on past statistical information that the $15.00 fine levied by the judge would appear to be based on the severity of the violation and the relative seriousness of violating a school crossing as opposed to a normal stop sign.

You also state your objection to the indication on the traffic ticket, "race". For your information I wish to point out that we use in the Floral Park Police Department the "Uniform Traffic Ticket and Complaint". This form has been recommended and approved by the American Bar Association, Traffic Court Program, and is in general use by police departments throughout the United States.

I hope that I have been of some service to you in explaining and clarifying for you those points raised in your letters.

Very truly yours,

JOSEPH H. DRISCOLL, JR.
Mayor

JHD/m

COPY

Nelson Glover
350 Roquette Avenue
South Floral Park, New York

COPY

August 9, 1966

The Honorable Joseph H. Driscoll, Jr.
Mayor
Incorporated Village of Floral Park
1 Floral Boulevard
Floral Park, New York

Dear Sir:

I am in receipt of your July 22nd letter in response to copies of my complaint correspondences with the New York State Commission for Human Rights and Mr. Nickerson.

Should you find it convenient to give further attention to the specifics of the filed complaint, you might come to agree that the contents of your letter do not respond to the specific charges of discriminatory practices and unethicalities raised in the complaint.

I do wish to thank you for your letter, however, and, as indicated by the accompanying letter copy, I have forwarded its contents to Mr. Potter in order to further assist the Commission in processing of the complaint.

Very truly yours,

Nelson Glover

Encl.: 1

MARLOW, MARLOW & MARLOW
COUNSELORS AT LAW
70 MIDDLE NECK ROAD
GREAT NECK, NEW YORK 11021

SAMUEL MARLOW
LENARD MARLOW
RICHARD A. MARLOW

AREA CODE 516
HUNTER 7-0012

September 14, 1966

Core
38 Park Row
New York, New York

Dear Steve:

I am enclosing the papers in the Headley matter for your files.

I disposed of this matter by reaching an accord with the Attorney General's office, whereby the suspension in this matter was reduced and the period of time covered by the suspension was made to run concurrently with the suspension already in effect.

George Headly agreed to this since he was otherwise gainfully employed.

With best regards for a Happy New Year.

Sincerely,

Richard A. Marlow

RAM:gu

HENRY, AARON et. al VS. CLARKSDALE, MISSISSIPPI 1963

[illegible] into the Artifical
Ice and Steam Heating Company, 1908

Box 37
Folder 12

Historical Society Of Wisconsin

Please Retain Original Order

STATE OF MISSISSIPPI

COUNTY OF COAHOMA

NO. 13,622 CHANCERY COURT

TO THE SHERIFF OF COAHOMA----COUNTY------GREETING:

You are hereby commanded to summons

Aaron Henry
R. L. Drew
Vera Pigee
John Melchor
H. Y. Hackett
J. D. Rayford
Tom Gaither
Lafayette Surney
Charles Evers
Martin Luther King, Jr.
Rev. James Bevel
Rev. A. Dudley Ward
Rev. Grover Bagby
Rev. Eugene Smith
Rev. Walmsley
Dale A. Fiers
Bishop Golden
Coahoma County, Mississippi, Branch of National Association for the Advancement of Colored People

Congress of Racial Equality

Coahoma County Council of Federated Organizations, comprised of National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Student Non-Violent Coordinating Committee and Congress of Racial Equality

if to be found in your County, to be and personally appear before the Chancery Court of Coahoma County, at the Court House of said County, in the City of Clarksdale, Mississippi, on the Third Monday in November, 1963, then and there to plead, answer or demur to the original bill of complaint this day filed against them by the City of Clarksdale, Mississippi.

Herein fail not, and have you then and there this writ.

(Attached hereto a copy of temporary injunction).

Issued under my hand and seal of said Court, at my office in Clarksdale, Mississippi, this the 8th day of July, 1963.

(Signed) T. F. Logan Jr.
Chancery Clerk

(Seal)

IN THE CHANCERY COURT OF COAHOMA COUNTY, MISSISSIPPI

CITY OF CLARKSDALE, A Municipal Corporation of the State of Mississippi, COMPLAINANT

No. 13622

VS.

AARON HENRY, ET AL.

## WRIT OF TEMPORARY INJUNCTION

TO AARON HENRY, R. L. DREW, VERA PIGEE, JOHN MELCHOR, H. Y. HACKETT, J. D. PAYFORD, TOM GAITHER, LAFAYETTE SURNEY, CHARLES EVERS, MARTIN LUTHER KING, JR., REV. JAMES BEVEL, REV. A. DUDLEY WARD, REV. GROVER BAGBY, REV. EUGENE SMITH, REV. WALMSLEY, DALE A. FIERS, BISHOP GOLDEN, THE COAHOMA COUNTY MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION, CONGRESS OF RACIAL EQUALITY, A CORPORATION, COAHOMA COUNTY COUNCIL OF FEDERATED ORGANIZATIONS COMPRISING DEFENDANTS, THE COAHOMA COUNTY MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and CONGRESS OF RACIAL EQUALITY, and SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, STUDENT NON-VIOLENT COORDINATING COMMITTEE, THEIR AGENTS, MEMBERS, EMPLOYEES, ATTORNEYS, SUCCESSORS, AND ALL OTHER PERSONS IN ACTIVE CONCERT WITH THEM:

WHEREAS, the City of Clarksdale, a municipal corporation of the State of Mississippi, has filed its Bill in the above Court against you and others, praying for an injunction in the matters hereinafter set out; and

WHEREAS, The Chancery Court of Coahoma County, Mississippi, has directed a temporary injunction to issue as therein prayed, its fiat therefor being endorsed on said Bill, directing the temporary injunction to issue upon the execution by the City of Clarksdale of a bond conditioned according to law in the sum of Two Thousand Five Hundred ($2,500.00) Dollars; and

WHEREAS, said bond has been given and approved;

NOW, THEREFORE, you are hereby commanded and temporarily enjoined, until further order of this court, from engaging in, sponsoring, inciting or encouraging mass street parades or mass processions, or like demonstrations without a permit, unlawful blocking of the public streets or sidewalks, trespassing on private property after being warned to leave the premises by the owners or person in possession of said private property, congregating on the streets or public places as mobs, and unlawfully picketing business establishments or public buildings in the City of Clarksdale, Coahoma County, Mississippi, and from performing acts calculated to cause breaches of the peace in the City of Clarksdale, Coahoma County, Mississippi, and from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing, and from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts and from engaging in acts and conduct customarily known as "kneel-in's" in churches in violation of the wishes and desires of said churches.

You will refrain from doing any of the foregoing acts until the further order of this Court, upon penalty of contempt.

WITNESS THE SIGNATURE AND SEAL of the undersigned, this 8th day of July, 1963.

(signed) T. F. Logan Jr.
T. F. LOGAN, JR., CHANCERY CLERK

TO THE SHERIFF OR ANY LAWFUL
OFFICER OF COAHOMA COUNTY,
MISSISSIPPI:

You will execute the above writ of temporary injunction and make return to the next term of this Court.

(signed) T.F.Logan,Jr
T. F. LOGAN, JR., CHANCERY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

DELTA DIVISION

| | |
|---|---|
| AARON HENRY, R. L. DREW, VERA PIGEE, JOHN MELCHOR, H. Y. HACKETT, J. D. RAYFORD, Plaintiffs, v. | |
| HON. W. H. BIZZELL, Judge of the Chancery Court, Coahoma County, Mississippi, HUDSON F. BELL, JR., a Commissioner of Clarksdale, Mississippi, W. S. KINCADE, Mayor of Clarksdale, Mississippi, J. W. McKELLAR, a Commissioner of Clarksdale, Mississippi, THOMAS PEARSON, Prosecuting Attorney, Coahoma County, Mississippi, LEON PORTER, City Attorney, Clarksdale, Mississippi, HOKE STONE, District Attorney, Coahoma County, Defendants. | CIVIL ACTION NO.__________<br>VERIFIED COMPLAINT |

AARON HENRY and the other named plaintiffs file this Complaint under the Federal Declaratory Judgment Act, 28 U.S.C. 2201 and 2202, against the named defendants, and aver:

## JURISDICTION

Jurisdiction of this Court is invoked under the First, Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitution; Title 28, United States Code, Section 2201 and 2202; Title 28, United States Code, Section 1343 (3); Title 42, United States Code, Sections 1981, 1982, 1983, 1984 and 1985, as amended.

## PARTIES

1. The plaintiffs are Negro citizens of the City of Clarksdale, Mississippi, and/or the County of Coahoma,

Mississippi, and bring this action for themselves and for all others similarly situated, pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure.

2. Upon information and belief, the defendants are as follows:

(a) HUDSON F. BELL, JR. is a Commissioner of Clarksdale, Mississippi;

(b) W. M. BIZZELL is a Judge of the Chancery Court, Coahoma County, Mississippi;

(c) W. S. KINCAID is the Mayor of Clarksdale, Mississippi;

(d) J. W. McKELLAR is a Commissioner of Clarksdale, Mississippi;

(e) THOMAS PEARSON is the Prosecuting Attorney of Coahoma County, Mississippi;

(f) LEON PORTER is the City Attorney of Clarksdale, Mississippi;

(g) HOKE STONE is the District Attorney of Coahoma County, Mississippi.

## ACTUAL AND SUBSTANTIAL CONTROVERSY

1. On July 8, 1963, the defendant, HON. W. M. BIZZELL, issued the Writ of Temporary Injunction here in question, a copy of which is appended hereto and made a part of this Complaint.

2. The plaintiffs, all of whom are members of the Negro race, are named as defendants in the underlying Bill for Injunction filed with the Chancery Court of Coahoma County, Mississippi on or about July 8, 1963, a copy of which is attached hereto and made a part hereof.

3. That the aforesaid Writ of Temporary Injunction violates the Constitution of the United States and the Amendments thereto by making criminal contact, which is protected by First, Fifth, Thirteenth, Fourteenth, and/or Fifteenth Amendments to the Constitution of the United States and other Amendments thereto.

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2. Upon information and belief, the defendants are as follows:

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(b) W. M. BIZZELL is a Judge of the Chancery Court, Coahoma County, Mississippi;

(c) W. S. KINCAID is the Mayor of Clarksdale, Mississippi;

(d) J. W. McKELLAR is a Commissioner of Clarksdale, Mississippi;

(e) THOMAS PEARSON is the Prosecuting Attorney of Coahoma County, Mississippi;

(f) LEMON PORTER is the City Attorney of Clarksdale, Mississippi;

(g) HOKE STONE is the District Attorney of Coahoma County, Mississippi.

## ACTUAL AND SUBSTANTIAL CONTROVERSY

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2. The plaintiffs, all of whom are members of the Negro race, are named as defendants in the underlying Bill for Injunction filed with the Chancery Court of Coahoma County, Mississippi on or about July 8, 1963, a copy of which is attached hereto and made a part hereof.

3. That the aforesaid Writ of Temporary Injunction violates the Constitution of the United States and the Amendments thereto by making criminal contact, which is protected by First, Fifth, Thirteenth, Fourteenth, and/or Fifteenth Amendments to the Constitution of the United States and other Amendments thereto.

4. That in particular, plaintiffs are being enjoined from demonstrating upon the streets of Clarksdale, Mississippi, in protest against certain laws, practices and customs seeking to perpetuate the practice of segregation of the races, and for engaging in other lawful forms of peaceful protest against such laws, practices and customs.

## IMMEDIATE AND IRREPARABLE INJURY

1. The existance of this Writ of Injunction has and will continue to deny to these plaintiffs their constitutional rights of free speech, assembly and petition and other important constitutional guarantees, unless this Court grants the requested relief.

2. A declaration of the constitutional rights of these plaintiffs would prevent unconstitutional enforcement of and arrests under the Writ of Injunction.

3. A declaration of the rights of these plaintiffs to peacefully speak, assemble and petition, and engage in other lawful forms of peaceful protest against racial segregation would permit these plaintiffs to repose continued faith in the safeguards and protection of the law.

4. Unless the requested relief is granted, these plaintiffs will continue to face arrest and confinement to jail for the exercise of constitutionally guaranteed freedoms and protections.

5. Unless the requested relief is granted, these plaintiffs, by threatened unconstitutional confinement, would suffer loss of income to the detriment of themselves and their families.

6. Unless the requested relief is granted, these plaintiffs and others similarly situated will not be able to

fully enjoy the public streets and facilities of Clarksdale, Mississippi and/or Coahoma County of Mississippi, as well as the peace and tranquility of citizens as insured by the Constitution of the United States.

## RELIEF PRAYED

1. That the Court immediately issue a Temporary Restraining Order and/or a Temporary Injunction to halt any arrests and/or prosecutions under the aforesaid Writ of Temporary Injunction issued by defendant,
on June 6, 1963.

2. That the Court declare said Writ of Temporary Injunction issued by defendant, HON. W. M. BIZZELL, on July 8, 1963, unconstitutional, void, and of no effect.

R. JESS BROWN
125½ North Farish Street
Jackson, Mississippi

CARSIE HALL
115½ North Farish Street
Jackson, Mississippi

WILLIAM M. KUNSTLER
511 Fifth Avenue
New York, N. Y.
Attorneys for Plaintiffs

JACK YOUNG
115½ North Farish Street
Jackson, Mississippi

STATE OF MISSISSIPPI )
　　　　　　　　　　　: ss.:
COUNTY OF COAHOMA　 )

AARON HENRY, being duly sworn, deposes and says:

That I am one of the plaintiffs in this action; that I have read the foregoing complaint and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters, I believe it to be true.

AARON HENRY

Sworn to before me this
day of July, 1963.

NOTARY PUBLIC

LAW OFFICES OF
F. B. McKISSICK
213½ WEST MAIN STREET
DURHAM, NORTH CAROLINA

RECEIVED
AUG 13 1963
VLADECK & ELIAS

COPY

August 10, 1963

Mrs. Barbara A. Morris, NAACP
20 West Fortieth Street
New York 18, New York

Re: Aaron Henry et al versus City of Clarksdale, Mississippi

Dear Barbara:

Thanks for your note of August 8 regarding the captioned matter. I have read the Motion to Dissolve or the Stay of Execution and I find same to be in excellent order. Please keep me posted on the outcome and if necessary, I will be happy to appear on behalf the Congress of Racial Equality wheneve[r] the need arrives.

Please send a copy of the Motion to the address indicated below:

VLADECK AND ELIAS
Counselors at Law
280 Broadway
New York 7 New York

Attention: Mr. Carl Rachlin

As you know, Carl Rachlin is General Counsel for CORE and we desire to keep him properly advised. With every good wish, I am

Very truly yours,

copy

F. B. McKissick
Attorney-at-Law

fbmck/edf

cc: Carl Rachlin

Dear Floyd
Thank you for your
letter of Aug 10 re
Henry v Clarksdale, Miss.
I hope to receive papers soon.
I am glad you have volunteered
because [illegible] Garthen has written me, [illegible]

The serious shortage of lawyers in the state. I am trying to persuade one or two more to be available.

If essential I or one of my partners can also go to Clarksdale if it turns out you or anyone else be tied up.

As you can imagine things are very hectic in New York and N.J.

My love to your family

Regards

~~new file~~
CORE MISSISSIPPI

August 13, 1963

F. B. McKissick, Esq.
213½ West Main Street
Durham, North Carolina

Dear Floyd:

Thank you for your letter of August 10, re Henry v. Clarksdale, Miss. I hope to receive papers soon. I am glad you have volunteered because Tom Gaither has written me about the serious shortage of lawyers in the State. I am trying to persuade one or two more to be available.

If essential, I or one of my partners can also go to Clarksdale should you or anyone else be tied up.

As you can imagine, things are very hectic in New York and New Jersey.

My love to your family.

Regards,

CR:cr
cc: Mrs. Barbara A. Morris

CARL RACHLIN

IN THE CHANCERY COURT OF COAHOMA COUNTY, MISSISSIPPI

---

CITY OF CLARKSDALE, A Municipal Corporation : 
of the State of Mississippi : COMPLAINANT

VS. : NO. 13622

AARON HENRY, et al : DEFENDANTS

---

# MOTION TO DISSOLVE AND/OR STAY EXECUTION OF THE WRIT OF TEMPORARY INJUNCTION

Now comes AARON HENRY, R. L. DREW, VERA PIGEE, JOHN MELCHOR, H. Y. HACKETT, J. D. RAYFORD, TOM GAITHER, LAFAYETTE SURNEY, CHARLES EVERS, REV. A. DUDLEY WARD, REV. GROVER BAGBY, REV. EUGENE SMITH, REV. WALMSLEY, DALE A. FIERS, BISHOP GOLDEN, THE COAHOMA COUNTY MISSISSIPPI BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, CONGRESS OF RACIAL EQUALITY, A CORPORATION, and STUDENT NON-VIOLENT COORDINATING COMMITTEE by their attorneys and to the court states as follows:

1. That the above named persons and organizations are defendants in an action pending in this Court brought by the City of Clarksdale on July 8, 1963, by the filing of Bill for Injunction applying for an ex parte temporary injunction. Without notice to the defendants herein, this Court set this matter down for a hearing on the third Monday of November 1963, and issued an injunction enjoining the defendants from engaging in various activities alleged to be unlawful, pending the November hearing.

2. The individual defendants are Negro and white United States citizens, residents and non-residents of the State of Mississippi; The Coahoma County Mississippi Branch of the National Association for the Advancement of Colored People is an unincorporated organization; The Congress of Racial Equality is a corporation of the State of New York

national in scope; and The Student Non-Violent Coordinating Committee is an unincorporated organization national in scope. All of the defendants are opposed to the policies and practices of racial segregation and discrimination now being enforced by the public authorities of the City of Clarksdale, Mississippi.

3. Resident Negro citizens of the City of Clarksdale, and of the State of Mississippi, have been, and are being denied free access to public facilities within the State, equal educational opportunities, the exercise of their voting rights without discrimination based upon race, and the right to lead their personal lives and to pursue their business and professional occupations free of the onus of racial discrimination and segregation; they have been and are being denied the right to exercise freedom of association by joining together and engaging in lawful group activity in protest against the policies and practices hereinabove set out and by engaging in picketing and other peaceful means of publicizing and making known their objections to the misuse of state power by defendants to deprive Negroes of citizenship rights.

Since or about June 17, 1963, defendants have peacefully assembled, from time to time in various areas in the City of Clarksdale to express their dissatisfaction and to seek redress of their grievances arising from the illegal maintenance and enforcement of racial segregation by plaintiff authorities. Defendants have sought, by equally peaceful means, to state their grievances arising from illegal discrimination against Negroes. More specifically, defendants, or some of them, have done the followings:

a. Attempted to picket churches by walking in an orderly manner in small groups, single file, in front of such churches carrying placards invoking the intercession of God to the end that segregation and the exclusion of Negroes from those churches should be ended. At no time did defendants or any of them block the sidewalks in any manner which would prevent its use by other persons.

b. Attempted to picket the public library, the Clarksdale Press Register newspaper office, and the Southern Bell Telephone Company office in Clarksdale, by walking in an orderly manner in small groups, single file in front of such building and offices carrying placards to enlist the support of the latter businesses, for the end of racial discrimination and segregation of Negroes in the City of Clarksdale and for equal treatment of Negroes in the City of Clarksdale; to protest racial discrimination and segregation in Clarksdale, and to protest the denial of all library and other recreational facilities to Negro citizens of Clarksdale on an integrated basis. At no time did defendants or any of them block the sidewalks in any manner which would prevent its use by other persons.

c. Attempted to petition the Coahoma County Circuit Clerk in Clarksdale for redress of their grievances concerning unfair treatment of Negroes attempting to register to vote in Clarksdale, Mississippi, by walking in an orderly manner in small groups, single file in front of the Coahoma County Courthouse carrying placards urging the Clerk to allow the non-discriminatory registration of Negroes to vote. At no time did defendants or any of them block the sidewalks in any manner which would prevent its use by other persons.

d. Attempted to persuade places of public accommodation in Clarksdale, Mississippi, to adopt non-discriminatory hiring practices of Negroes by walking in an orderly manner in small groups, single file, in front of such places, and by disseminating literature advocating that patronage be withheld from various private business establishments until employment practices discriminatory to Negroes or to other racial groups are terminated. At no time did defendants or any of them block the sidewalks in any manner which would prevent its use by other persons.

e. Attempted to petition for redress of their grievances by walking in front of the Clarksdale City Hall two abreast, carrying signs advocating the end of racial segregation, and discrimination in Clarksdale, and petitioning the Police Department of Clarksdale for an end to unfair, discriminatory and brutal treatment of Negroes. Defendants obeyed traffic signals, at no time blocked the public sidewalks in any manner, nor did they block the entrance or exit to buildings, nor prevent or attempt to prevent persons from leaving or entering such buildings.

f. Entered a place of public accommodation in Clarksdale, and requested service at a lunch counter on a racially integrated basis. When refused service pursuant to the requirements of state statutes and orders and directives of plaintiff, defendants or some of them remained on the premises. Defendants' requests were orderly and at no time did they block ingress or egress to such places of public accommodation.

4. The city authorities are engaging in a course of conduct designed to prevent the defendants from exercising their guaranteed constitutional rights. They have arrested persons for peacefully protesting racial segregation; they have threatened and intimidated defendants and persons acting in concert with them; they have attempted to interfere with and to prohibit peaceful and orderly demonstrations conducted by individual defendants and by members of the corporate defendant, and defendant organizations.

5. Since June 17, 1963, and prior and subsequent thereto numerous persons have been arrested and have been required to post bonds in varying amounts from $400 to $500 each. Most of the persons arrested have been tried, convicted and sentenced under the particular statute or ordinance allegedly violated, without regard to their clear constitutional rights.

6. Notwithstanding the fact that the plaintiff, and its officials, agents and servants, well knew, and still know, that defendants' sole purpose is to assert and exercise their rights guaranteed and protected by the Constitution and laws of the United States, plaintiff authorities, pursuant

to their commitment to use the police power of the State of Mississippi for the maintenance of racial segregation, have illegally, unwarrantedly and without just cause interfered with the defendants, and each of them. Plaintiff has interfered with defendants' efforts to exercise their rights of freedom of speech, peaceful assembly and to petition for redress of their grievances by forcibly breaking up peaceful gatherings of defendants, or some of them, and by immediately arresting defendants upon their appearance on the sidewalks or streets of Clarksdale. Plaintiff, through its agents, servant and officials, has arrested defendants on diverse charges, including Code of Mississippi, Section 1088 (Restraint of Trade); Section 2409.7 (Trespass); and for parading without a permit although the defendants aver upon information and belief that the ordinances of the City of Clarksdale do not include parading without a permit as a violation. Such arrests have been made by plaintiff solely for the purpose of harassing and intimidating defendants and even though plaintiff well knows that no valid and lawful conviction could result from these arrests.

7. Any violence or violation of law which has resulted from these peaceful demonstrations has been accomplished by city authorities themselves and not by the defendants or any persons acting in concert with them.

8. Having failed in their efforts of intimidation, harassment, unlawful arrest and various and sundry other abuses of state authority, plaintiff has now sought and obtained an injunction without notice, specifically aimed at frustrating and defeating the rights of the defendants to exercise rights secured under the Constitution of the United States. The injunction issued by this Court is broad and sweeping to the extent that defendants are denied the notice of acts, within or without the terms of the injunction, required by due process of law.

9. The law is clear that no state may use its authority to prevent the exercise of freedom of speech and

association. The law is clear that no state may bar peaceful picketing or freedom of speech or association for a lawful purpose. The law is clear that all persons may picket public and private business establishments, informing the public of their complaints about discrimination in employment or abuses of equal employment opportunities. The law is clear that all persons may join together to picket, and to advocate that patronage be withheld from various private business establishments until employment practices, discriminatory to Negroes or other racial groups, is terminated, and that all persons may join together and disseminate literature advocating that patronage be withheld from various private business establishments until employment practices discriminatory to Negroes or to other racial groups are terminated.

The injunction issued by this Court is in patent derogation of the constitutional rights of the defendants. Defendants intend to continue to:

a. Picket churches by walking in an orderly manner in small groups, single file, in front of such churches carrying placards invoking the intercession of God to the end that segregation and the exclusion of Negroes from those churches should be ended. At no time will defendants or any of them block the sidewalks in any manner which would prevent its use by other persons. Defendants shall also attend church services in Clarksdale.

b. Picket public facilities and utilities, places of public accommodation and recreational facilities by walking in an orderly manner in small groups, single file in front of such establishments carrying placards enlisting support for the end of racial discrimination and segregation of Negroes in the City of Clarksdale, and for equal treatment of Negroes in the City of Clarksdale; to protest racial discrimination and segregation in Clarksdale, and to protest the denial of all recreational facilities to Negro citizens of Clarksdale on an integrated basis. At no time will defendants or any of them block the sidewalks in any manner which will prevent its use by other persons.

c. Petition the Coahoma County Circuit Clerk in Clarksdale for redress of their grievances concerning unfair treatment of Negroes attempting to register to vote in Clarksdale, Mississippi, by walking in an orderly manner in small groups, single file, in front of the Coahoma County Courthouse carrying placards urging the Clerk to allow the non-discriminatory registration Negroes to vote. At no time will defendants or any of them block the sidewalks in any manner which will prevent its use by other persons.

d. Attempt to persuade places of public accommodation in Clarksdale, Mississippi to adopt non-discriminatory hiring practices of Negroes by walking in an orderly manner in small groups, single file, in front of such places; and by disseminating literature advocating that patronage be withheld from various private business establishments until employment practices discriminatory to Negroes or to other racial groups are terminated. At no time will defendants or any of them block the sidewalks in any manner which will prevent its use by other persons.

e. Petition for redress of their grievances and protest racial segregation and discrimination in Clarksdale by walking on the public streets in an orderly manner and in front of the City Hall and other public buildings two abreast, carrying signs advocating the end of racial segregation and discrimination in Clarksdale; and petitioning the Police Department of Clarksdale, Mississippi for an end to unfair, discriminatory and brutal treatment of Negroes. Defendants will obey traffic signals, will at no time block the public sidewalks or streets in any manner, nor block the entrance or exit to buildings, nor prevent or attempt to prevent persons from leaving or entering such buildings.

f. Enter places of public accommodation in Clarksdale, and request service at lunch counters on a racially integrated basis. When refused service pursuant to the requirements of state statutes and orders and directives of plaintiff, defendants or some of them will remain on the premises. Defendants' requests shall be orderly and at no time will defendants block ingress or egress to such places of public accommodation.

10. The defendants aver that the injunction is invalid and that it violates the defendants' federally guarantee constitutional rights as free citizens of the United States. In the meantime, the temporary injunction issued on July 8, 1963, without hearing, returnable the third Monday in November 1963, is depriving defendants of their constitutional rights; that temporary injunction is patently void and violates the defendants' rights to procedural due process.

Defendants respectfully pray that this Court dissolve and/or stay execution of the temporary injunction, instanter, pending a hearing thereon on the third Monday of November 1963.

Jack Young
Carsie A. Hall
115½ North Farish Street
Jackson, Mississippi

R. Jess Brown
125½ North Farish Street
Jackson, Mississippi

Robert L. Carter
Barbara A. Morris
20 West 40th Street
New York 18, New York

Frank D. Reeves
508 Fifth Street, N. W.
Washington, D. C.

Attorneys for Defendants

By ______________________________

Dated: August, 1963

## VERIFICATION

STATE OF MISSISSIPPI )
) SS.:
COUNTY OF COAHOMA )

Aaron Henry, being first duly sworn, says that he is one of the defendants and movants in this case, and that he has read the above answer and motion, and that all of the allegations contained therein are true to the best of his information, knowledge and belief.

____________________________

Sworn to and subscribed before
me this ____ day of August 1963

____________________________
Notary Public

## CERTIFICATE OF SERVICE

This is to certify that on the ___ day of August 1963, a copy of the Answer and a copy of the Motion to Dissolve and/or Stay Execution of the Writ of Temporary Injunction was served personally on Maynard, Fitzgerald and Maynard, Stevens Building, Clarksdale, Mississippi.

______________________________

MAR 24 REC'D

IN THE

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
and
IN THE
JUDICIAL COUNCIL FOR THE FIFTH CIRCUIT

In the matter of the petition of AARON HENRY, ROBERT MOSES, DAVID DENNIS, and R. EDWIN KING, individually and as representatives of the classes of Negro citizens and residents of Mississippi and white citizens of Mississippi and the United States concerned with and involved in activities seeking implementation and enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Petitioners, by their counsel, respectfully petition this Court in its supervisory role and capacity as the United States Court of Appeals for the Fifth Circuit and/or in the alternative as the Judicial Council of the Fifth Circuit as follows:

1. Petitioner AARON HENRY is a Negro resident and citizen of the State of Mississippi; President of the Mississippi State Conference of Branches of the National Association for the Advancement of Colored People; Vice-President of the Southern Christian Leadership Conference and President of the Council of Federated Organizations, hereinafter referred to as COFO, an organization composed of all civil rights and local citizenship groups in the State of Mississippi whose fundamental purpose is to achieve equality and freedom guaranteed to Negro citizens by the Constitution of the United States.

2. Petitioner ROBERT MOSES is a Negro resident of the State of Mississippi, Mississippi Project Director for the Student Non-violent Coordinating Committee and Program Director for COFO.

3. Petitioner DAVID DENNIS is a Negro resident of Mississippi, a Field Secretary for the Congress of Racial Equality and Assistant Program Director for COFO.

4. Petitioner R. EDWIN KING is a Caucasian resident and citizen of the State of Mississippi, an ordained Methodist minister and the Chaplain of Tougaloo Southern Christian College, and an adviser for COFO.

5. Said petitioners make this petition individually and on behalf of the class of Negro citizens and residents of the State of Mississippi and of the class of white citizens of the State of Mississippi and the United States concerned with and involved in activities seeking implementation and enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

6. HONORABLE WILLIAM HAROLD COX is a duly appointed Judge of the United States District Court for the Southern District of Mississippi and is the Chief Judge of said District Court.

7. Certain public information has come to the attention of your petitioners, as contained in the annexed affidavit of WILLIAM M. KUNSTLER.

8. This information was contained in a news article published by the New York Times on Monday, March 9, 1964, and reads in full as follows:

> JUDGE DUE TO RULE ON SUIT TO
> SPEED UP NEGRO REGISTRATION
>
> Special to The New York Times
>
> JACKSON, Miss., March 8 --
>
> Federal District Judge Harold Cox is expected to rule Wednesday on a Justice Department suit to speed up the processing of Negro voter applicants at Canton.

The judge has criticized the registration drive as "grandstanding." He took no action yesterday on a request by John Doar, department attorney, that he immediately order L.F. Campbell, Madison County voter registrar, to handle at least six Negro applicants at a time.

At yesterday's hearing Judge Cox, the first judge appointed by President Kennedy under the 1961 expansion of the Federal judiciary, repeatedly referred to Negro applicants as "a bunch of niggers."

He said he was interested in eliminating discrimination in the registration of voters, "but I am not interested in whether the registrar is going to give a registration test to a bunch of niggers on a voter drive."

More than 200 Negroes tried to apply for registration at Canton on a "Freedom Day," Feb. 28. Judge Cox said it "appeared that these people went to a church and were pepped up by a leather-lung preacher, and they gathered in the streets like a massive dark cloud and descended on the clerk."

Mr. Doar asked the judge where he had received such information.

"From the newspapers," he replied.

Mr. Doar contended "there is nothing un-American about registering to vote," and "I think it is quite proper for people to assemble to do it."

Judge Cox agreed that "it is all right for them to get in line if they want to, I guess." He said, however, that it seemed "most of them were just grandstanding; they ought to be in the movies instead of being registered to vote."

"Who is telling these people they can get in line and push people around, acting like a bunch of chimpanzees?" he asked.

The Justice Department suit charged that Mr. Campbell had handled only one Negro at a time and processed only six of more than 200 Negro applicants who appeared Feb. 28.

Judge Cox took the arguments under advisement and asked further information before ruling on a temporary injunction.

9. This information reveals that the said Federal District Court Judge has evidenced a prejudice against the petitioners and the class of Negro citizens and residents of the State of Mississippi they represent, as well as the class of white citizens of Mississippi and the United States concerned with and involved in activities seeking implementation and enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States, so pervasive as to render him incapable of administering fair and impartial justice to these petitioners and the classes of Negro and white citizens they represent.

10. This petition is made pursuant to the general supervisory powers and jurisdiction of this Court and pursuant to Title 28 U.S.C. 332 establishing the power and jurisdiction of the Judicial Council to make all necessary orders for the effective and expeditious administration of the business of the Courts within the Circuit.

11. Petitioners and the classes of citizens they represent are entitled under the Constitution and the Statutes of the United States to the fair and impartial administration of justice in a federal court. The reported conduct of the said District Judge towards petitioners and the classes of citizens they represent as set forth above reflects a pervasive prejudice against Negro citizens and a belief in the inferiority of the Negro race rendering him incapable of administering fair and equal justice in matters involving the Negro and the enforcement of the Thirteenth Fourteenth and Fifteenth Amendments to the Constitution of the United States.

12. Petitioners respectfully petition this Court or this Court duly convened as a Judicial Council pursuant to Title 28, U.S.C. 332 to issue an order to show cause or rule why an order should not be entered directing that the said District Court Judge shall not be assigned to hear and determine any civil or criminal causes as well as any motions or proceedings of any nature what-

soever involving the enforcement, implementation or application of equal civil rights as guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States and the laws of the United States, and in particular the Civil Rights Act, Title 42, U.S.C. Section 1971, 1981 et seq.

13. Petitioners further petition that on the return date of the aforesaid order to show cause a hearing be held before this Court or Judicial Circuit or before a master duly appointed thereby at which hearing petitioners will be prepared to prove by expert testimony that the conduct of the said District Court Judge in open court as reported in the public press reflects a pervasive prejudice against Negro citizens and a belief in the inferiority of the Negro race rendering him incapable of administering fair and equal justice in matters involving Negro citizens and the enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Respectfully submitted,

Petitioners by their Attorneys

KUNSTLER KUNSTLER & KINOY
By: WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

511 Fifth Avenue
New York, N.Y. 10018

[illegible], FLORENCE CASE, NOTES, N.D.

Historical Society of Wisconsin

Please Retain Original Order

Box 37
Folder 13

FRIDAY

5:30-6:00

Mrs. Heyward

(4 tapes)

Andy will be told to get
Ws there at 6:00

J Franklin ——— (S.J. Core)

Reverend Booker — Allen Meth. Church
farmer minister" 160 St. —

Mrs. Heyward 'll try & locate him —

Δ

lot of noise
st behind R (2-3)-

8:00-12:30 no cars going through
LIE any c milk truck

didn't see few seconds pre cop pushed R

R held hand up after cop pushed him

cars did go by — (then) no cars

LIE didn't see any cars

LIE pushed R. towards curb where Δ was now

LIE Q: why'd U push me? A: [don't remember (Δ)]

at [redacted]:
carmen "come on home"
cop & R- get into c wagon
I'm going & get mamma
man

LIE cop chased - but never laid hands
on her till reached mother

time between cop grabbing R + Δ running
Δ = don't know I forget
2-3 minutes

2 KIDS - who are they

cops trying to pull Δ in 2 wagon
→ wouldn't let R's hand go

tried to pull Δ away from R

he didn't do anything

chased + caught Δ
tried to get him in green car
+ tried to get away
man in car said = take him to Union Hall

cops were rough —

cl Harris
d. Sheaf

Ronald [illegible] Heywood - Mae Tandler 624 4224

Aug 4 - Flo's case might depend
upon R's arrest / conviction

if R's -

? = Try + make it a 722 case —
+ then argue ∅ force in
not aiding in own arrest -

10882 | plainclothesman

2d plaincl man said we only want [illegible]

Florence Heywood -- age 13

student at Richard S Grossley Jr Hi 8-

✓ going into 8th grade

Average Grades -- never failed a course

Merit certificates : 2 - English

1 - Homemaking

1 - 5 2a class

Never before in any kind of trouble -

So Jane Cane is trying to find Ws

date → Aug 3-

Δ's story

June 29-- demo at 107 Av +
160 St Ans

circling intersection from 8 to 9
50 demos? + 10-15 cops ?
Δ walking a little behind brother
1 cop pushed Δ's brother out of the circle
bro = why'd you push me? add
cop = shut up + get over to the side
(pointing toward pol. truck)
bro walked towards rear of truck (very closely)
+ Δ ran up + pulled his arm + told him to go home saying "he didn't do anything!"

Cop (plnclothes) pulled Δ's hand away, + Δ started running towards home yelling,
"I'm going to get mamma down here"

2 plnclothes cops chased her

? (mother, told of the trouble, had started toward the corner)

Δ ran up to mother, jumped + grabbed mother around neck; mother held her tight.

5 uniformed cops + 2 plainclothes cops gathered

Mother said "don't you take my daughter"

what did she do?"

; 1 cop grabbed Δ by arm or shoulder; one by the neck, hitting her in the face (left cheek) + pulled her from

same motion

mother -- [just then another cop hit mother in face (bloody nose) + she fell to the ground] —

Then cops (#3) grabbed Δ by both ankles + shoulders + threw her into a private car

[the driver seems to have volunteered to drive them -- not very new - green - probably a Buick Special - 3 round, not oval, metal holes ]

Took Δ rt to children's shelter — forced her to pull up blouse + take off pants —

In detention room ~~[illegible]~~, w/ mother, + 2 ladies Lemke asked her "did I hit you?" Δ = no (frightened) I said = "4 people said I hit you"

107-29 160-St PVT HOME

[tel = AX1-4093
Mrs. Cooper - five doors away]

8 children - 4+4 -

Mrs. Heywood confirms same story

also says - after she fell 2 c ground,
a cop tried to get her
to get into c car
she said: "I didn't do anything"
-nose very bloody, & cop
turned away -

Hon. Balsam → S.C.

on July 6 - judge gave the cop a hard time - he was in the neighborhood & saw the demo - didn't see any violence - was very orderly.

didn't see how this could've come out of it —

e.g. =

"how, then, do you arrest a grown man?"

on July 23 =

"_all_ cops can't be liars, can they?"

Parsons blvd
red bus
v NY blvd
off off = 107 Ave

Witnesses

1 W saw 10882 slap Δ

√1- Mrs. Annie Heyward 107-29 160 St Qns
Mother of Δ (AX1- 4093 Mrs Cooper)
107-15 HILDRED

√2- Mrs. Virginia Taylor

OL 7-7161

3- John Brown

— √ 4- Martha Lee Downing - 108-36 160 St

— √ 5- Louisa Ferguson 107-54 159 St

RE 9- 1029

6- Mrs. McGent

7- Samuel T. Kirby 118-22 202 Street
(porter on project)
St. Albans QNS-

8- Miranda Brothers grocery - one of the owners
saw it -- but since moved away

√ 9- Mrs. Anna Mae Jackson 107-08 160 St

(South Jamaica

Richie Haywood -13
assault charge

July 23

Demo - July 6 - traffic light

PL 2-8060

Q = what went on between c time Ronald
was pushed off c line + Florence
ran into Mother's arms

→ how did Mrs Haywood hear of c trouble
what was said -- where was she when she heard of it
how long did it take to get into c street

Ws →

Mrs. Hyacinth — husband dead
housewife — Sec Sec.

Va Taylor — lives w/o husband
J Brown ?
E Sessions ?

Martha Lee Downing — saw it all
"leave that kid alone!"

Miranda Bros Sgt. NKZ
ones who had stare before said
they saw it —

Louise Ferguson

Mrs. ? McGent

when S was fully breathing, crowd
behind was using foul language

crowding line

got saw R. when cops had already grabbed his hands

~~I kept walking~~

Va Tylor — saw S's head pulled off line

heard — leave my boy alone —
he didn't do anything

— then noticed S moving off & ?
I'm going to get my mother

behind ~~R~~

crossing 160 St

W saw (all did) off line
when W saw 2 plaincops charge S —

in front of
crowd saw cop slapping her (before Mrs H came) & saw her go
down & cop jerk her up
by shoulders ~~[illegible]~~ & feet & throw her into
car —

then mother came out — man in it said "I'll drive her" (volunteered his services?)

cop still holding her — saw cop slap mother in face
& fell down & saw her —
legs up —

more demo

≥1 jeep wagon

2 Syd cars parked front of house

next day — a cop walked up to sister Judy
& said "aren't you the one that was
arrested yesterday?"

UU

50 demo's + crowd on all 4 corners -
107 + 160 St

arrest 12:45 → Ronald Aymond (21)

- PTL LEMKE

circled intersection 8:00 →
all traffic blk'd
behind 1-bro.

cops = 10 ??

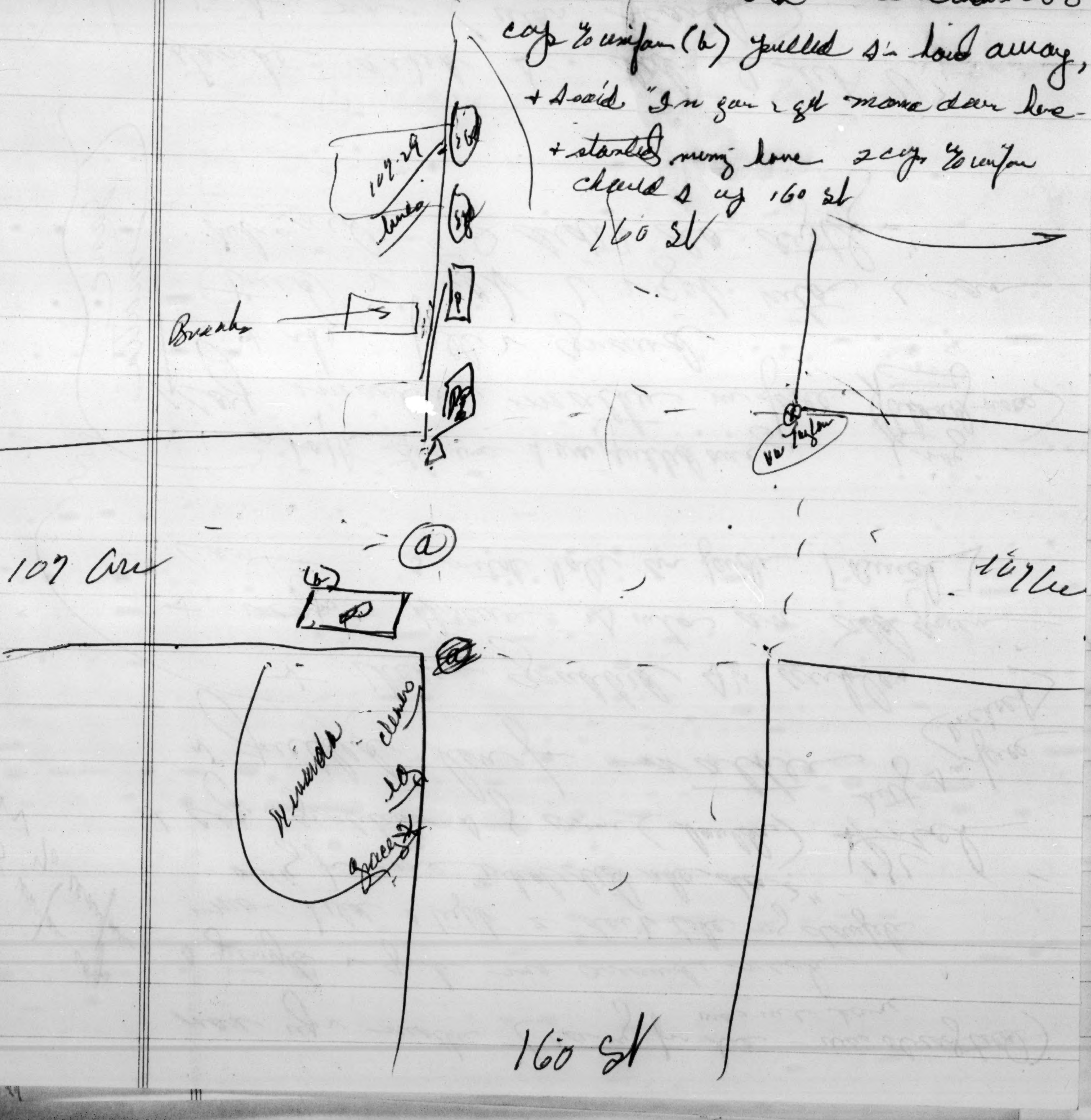
Ⓐ cop pushed him - "why'd U push me?" cop = shut up + get over toward side ~~[illegible]~~ (pointed to wagon) / walked to wagon

S- pulling bro's hand telling him to go home

at behind P wagon -

cop at Ⓐ grabbed bro's other hand + said he didn't do it

cop to uniform (b) pulled S's hand away, + said "I'm gonna get mama down here - + started moving home 2 cops to uniform chased S up 160 St


160 St
107:29
Linda
Breaks
uniform
Ⓐ
107 Ave
107 Ave
(b)
Miranda
clemo
S
grace
160 St

5 uniform cops
+ 2 no uniform

ran up 2 mother (crying for her – was already told
was in'l house)
& jumped 2 grab ma around neck
ma held me tight & "don't take my daughter
away from me – what did she do?" –
1 cop grabbed D by arm (shoulder) 1st 2 ~~punch~~
& pulled her from mother hit D in face
(D's cheek)
& then grabbed D's ankles
& 2 cops threw D into an ~~old~~ green
car – 3 metal hole on fender [Buick]

same matter

" after ~~Flowers~~ I was pulled away
cop smacked mother in face (bloody ~~blood~~ nose)
& she fell 2 ground
tried 2 get up 2 get into car
but said "I didn't do anything"

ask cops

Lemke asked D – did I hit U?
D said no (was scared)
=> 4 people said I hit you
(commentate in detention cell

searched D – & ~~stripped~~ had 2 take up
blouse & took off pants

Mrs. Ferguson a demonstration

a cop stopped R + let traffic pass

+ cop walked up 2 R. - "move back ~~keep on moving~~" -

+ he put up fists 2 hit R

+ R blocked 2 punch

+ 2 other cops came up, grabbed him + put him in patrol wagon

backed up + then stopped 2 let a car go by

R didn't move back

grabbed + walked pushed him toward wagon across 2 ~~street~~ corner

[redacted]

in front of R - backed back
3-5'

W ~~[illegible]~~ got out of path of car middle of st. -
+ then turned around heard commotion

heard cop 2 tell him 2 stay
+ then turned around
+ saw R put up ward off blow
but didn't see blow
+ only 1 cop

no fight

started walking again

+ some scuffle
+ then saw

+ only saw 3 cops take R away

Jamaica Av

9:30 Union Hall St

Qns Family Court

are 2 proceedings:

1- adj'd JD ?

2- punished therefor ?

girl = [illegible]
Jamaica tr. H. demo
Annie Heywood
"assault a cop"
(she gets hell up)

plenty of witnesses
— but she only
has a couple —

11

Family Court Act
JD = Article 7 —

Postpone it:

1- just got 2 case

2-

3- are witnesses who we should like to call; however, we do not know their names as yet —

— 2 determine them —

crowd + they didn't see
U didn't go 2 side where
2 [illegible] was —
time 2-3 minutes

1 girl arrested well before R's arrests

Porter at 2 project

① Samuel T ~~F[illegible]~~ Kirkey 118-28 202 St
St Albans

② Martha Lee Downing 108-36 160 St 3-B

③ Mrs. Laura Ferguson 107-54 159 St 1-A
tel- Re 9-1029

bad

when she gets upset- her nose starts bleeding

heard

107-12
upset her
2d hse f corner

in hse ~ in kitchen
came quick
some of the kids said - arrested son
+ trying to take Florence
just put Ronald in big green truck.
+ when I said don't take her
pushing her around & she said
I'm going to get ~~your~~ my mother
+
crying said I didn't want go - up
she was marching behind Ronald

VHO
HEARD
SAID

before

After filing pet. originating a JD proceeding . . .

128 – 139 the ct (disc.) may release or direct detention but only if substantial prob. he won't appear in ct or serious risk that he may (do an act which [crime]).

|| a child may not be found a JD unless he "requires supervision, treatment, or confinement"; . . .

to avoid needless stigma etc.

66

Queens

Florence Hayward

D-1456-64

Richard Locke Ptrl 22018

103 Pct

CYPU

x a peace officer

107-29 160 St. Jam NY

8/31/50

Ernest

Oralee

Dec

107-29 160 St. Jam NY

Father

Mother

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

June 29, 1964 at about 12:45 P.M.

107 Ave and 160 St.

She did unlawfully, without provocation assault the Petitioner by striking him with her clenched fists upon the face and chest area and using vile and indecent language towards the petitioner, to wit; "Yous no good white bastard, You dirty mother fucker " Further the above respondent was interfering with the police officer in the performance of his duty in holding back a crowd while a fellow officer was making an arrest.

was apprehended after fleeing from the assault on the petitioner and [illegible] respondent required to take her into custody.

Simple Assault, Interference with a police Officer in the performance of his duty.

Witness: Mrs. Aurie Heywood 107-29 160th Street...Qns

mother of the defendant

Was in kitchen of private home, approx eight houses from the conrer where incident occurred. A group of children burst into the house and said:

> Come quick, Mrs H, they just arrested your son, (or just put Ronald into the green truck); and when Florence said "don't take him, he didn't do anything" and "I'm going to get my mother" they started pushing her around..... and one cop said"we don't grown-ups, we just want the children"

WHO

> all this was said before Mrs Heywood got out of the house and ran down to the cormer towards the crowd. + while walking

she ran down towards the corner and when she was in front oif the second house from the corner, she noticed some plainclothesmen holding defendant. Def then broke from the cops, and ran into her mother's arms.

Witness: Mrs. Ferguson:

W was a demonstrator, walking somewhat behind both Ronald and defendant.

The police evidentally would hold up the line occasionally in order to allow the traffic pass. While Ronald was crossing the street, a cop walked up to him and said "move back"... Ronald did start to move back but then stopped (she says in order not to get hit by a car which was passing in the other direction)*** ... another cop then approached and put up his fists as if to hit Ronald. Ronald put up his hands and blocked the (punch?) and two other cops came up, grabbed him and "put him into the patrol wagon."

not complete.....

Telephone call of July ~~12~~ 24,

W was walking a few feet (said ~~2~~ 3,5') in front of Ronald; she had passed the path of the oncoming car(s?) and was about in the middle of the street....she heard a cop tell someone, (she assumes Ronald) to stop; she then turned around and saw R with one arm across his face, as if to "ward off a blow"... but she didn't see any blow ..... she then started walking and stopped and turned again when she heard a scuffle, seeing at that time three cops taking (pushing) R toward the wagon on the other side of the street (or on the angle side of the st.) ...a crowd immediately formed and she could not see anything else, as she was on the other side of the intersection.

2,3,4 minutes passed.....everyone was making noise, and she could not tell who ~~wa~~ it was that was yelling.....

then she was Florence run away from the crowd with two cops in persuit

Δ → mother

Δ asked cop what were they doing
& her brother

1st told him & "keep walkg" (said "was walkg")

pulling on R's arm --- not cop's arms

"

└ crowd was cursing, not Δ

## Judge OTTEN

Cross examination ||

how was ι crowd acting? was there cursing??

1 - did she specifically utter ι words cld've been ι crowd?

2 - how many cops were handling R

3 - when was ι arrest of S made
[why not till after R in ι wagon]
tie in w/ cop statements = just grabbed ι 1st

4 - was she actually hitting U or cld it be that she was merely not letting R's hand go.

5 - did U want 2 break up ι demo

6 - how many cops helped U w/ S -
why was it nec. 2 use 7 police offs on her?
∅ force?? why did U have 2 club her

2 teach them all a lesson?
2 make them sorry they demonstrated?
2 scare everyone home?

have U ever been disciplined or involved in litigation? U hit OO?
ever had any psychiatric help?

alone in 2 det. ~~[illegible]~~ room w/ cop.

Did U speak 2 S in ι detention cell
in ι detention room. ~~cell~~ : did U ask S —
" " tell her: 4 people said —

2 ladies in 2 room.
Mrs H.
& S

wy did U let A go when putting
R in the wagon ?

wy did you say - U didn't want the adults---
that U ony wanted the children ?
-or- wy did the police officer hear U say that?

wy is it that ony children were arrested
that day -

Mrs. - A - age
ch
work
any trouble w/ any kids
all go to church
do they curse?

when I asked - S what did u ever
say (get the hell out of here)

answered - just said a bad word
+ Mrs A had to tell her to repeat it

1st time

S has dreams? visits of father
father - very mild to the kids

Part time jobs occasionally
helps Mrs. Lears
cleans up. washes dishes - shops

classes - 30 in each - 3 merits certificate

in detention room - heard cry say
4 men. around there said I did

the mark on the left eye still there
but to ct's attention last time in court

will be in court

26

John Brown sat both place

Harriet

lives w/ Aunt Mrs. Va. Tanfor son in line sat behind R—

parents = Bklyn
work = const. workers

normal picketing + lights

procedure

cop shoved R— "hey man"— was
most times around
cop knocked vs him
R. pushed him — I told U not to ~~push me~~
but you had a no

A pulling R's + being hysterical

pulled him away there R in
A struggling — hollering — screaming
were holding her
she scrambled away — 2 steps
cop = that's his sister, get her too

NR L
end

threw R in — + a cop slapped him
[looked in after doors closed —
saw cop whipping R]

cop grabbing lots of people (+ A)
screaming — cursing
semi riot —

will be in court

Ronald Heyward

like mob violence
everybody out of hand —

A still holler that's my brother st.

cop not help A — she was in 2 crowd

then — that's his sister — back her up too
+ everybody else that seems 2 be a leader

3 cops held her —

A broke away — reached [illegible] ([illegible]) —
grabbed again
people with — commotion
a pushing 2 cops

Mrs H — grabbed A

will be in court — Monday

Monday

at 1/2 wagon + then 4 crowd

Mrs. Jackson — M. 4 children 14-5 separated housewife

R on steps of wagon

+ Δ ran over + grabbed ~~$~~ R's hand

Δ: "don't do anything"

get the hell out of here

Δ kept pulling R's arm.

(4) they pulled her off — pushed him

+ slammed the door shut —

she ran off: I'm going to get my mother"

they pulled her up the street

to the 2d house from the corner

Δ was struggling to get free

Δ never pulled away from the cops

Mrs H ran up to Δ + hugged her

the cop pushed her down

+ pulled her / dragged her away

told Δ go get your mother

then Δ yelled — I'm going to get my mother —

then — 4 plainclothesmen + 1 cop all ran

later: 1 cop 4 others .. talking to the crowd .. we might as well grab somebody —

knew Δ since a baby ... never heard her use foul language

cops cursing at the crowd

she never pushed any cops

plainclothesmen

flagged the green car down

there's some more Negroes, let's grab them all

police cars were
driving around

Mrs Davis —

walking w/ R —

"no one's going 2 mess w/ your sister"

officer ~~[illegible]~~ yellow badge

a cop at corner put hands out
(2 stop the group)

W 2 the l    R 2 the right

the ~~[illegible]~~ cop went & said:
you're smart, huh
& took him towards the wagon
S grabbed R's hand &
said "                                        "
— (2 cop) ~~[illegible]~~

W: "go get your mother" —

— my hand snatched S's hand
away — not held further
S the sister: I'm going 2 get my mother

ran 2 s-walk & then into
st again & around the cop
but they grabbed her (again?)

will be in it

Mrs. Taylor

just got out of hospital

see other sheet

even after K's thing

someone yelling "don't forget the hit the corner"

cops told everyone it was legal if we hit the corner

then △ running away

use here to describe the crowd peaceful - determined - not angry

Island

group of cops walking away + a group was following them + asking Qs

the cop said well we had to grab somebody we just grabbed the 1st ones we could catch

wanted to break up the demo

use this

Dennis Heyward

standg on SO cr when R grabbed

a N cop pushg R's wagon

W: why ~~do~~ you pushg on my brother

other cops came over

got between them

& said no one's pushg her

didn't see the incidents

---

saw Δ on ground + mother

got there + grabbed Δ

saw cop hit mother

Δ bad dream

daddy came to me
last night

very upset

she came in + when
I asked her what
L cops said, she didn't
want to say "hell" —

+ understand Δ

Ask
Mrs. Hayward

SEDFRE

HICKS, ROBERT et al. vs. STATE OF LOUISIANA, 1966
(BOGALUSA SCHOOL DESEGRATION CASE)

orical Society of Wisconsin

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Make file:
Police Brutality

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

GREGORY HICKS, BARBARA HICKS, and ROBERT HICKS, by their father and next friend, ROBERT HICKS; SAMUEL BARNES; MICHAEL JONES; AARON CORNELIUS GRIFFIN; CHARLES CURRIER; ALCIE TAYLOR, JR., by his father and next friend, ALCIE TAYLOR, SR.; ALCIE TAYLOR, SR.; HENRY ROBINSON, by his father and next friend HENRY ROBINSON; CHARLES WILLIAMS; RALPH GRAVES; and FLETCHER ANDERSON; individually and on behalf of those similarly situated,

CIVIL ACTION
NO.

PLAINTIFFS

VERSUS

CLAXTON KNIGHT, individually and as Chief of Police of the City of Bogalusa; JOHN (first name unknown) WASCOM, individually and as a Police Officer of the City of Bogalusa; JESSE H. CUTRER, JR., individually and as Mayor of the City of Bogalusa, Louisiana; THOMAS D. BURBANK, individually and as Director and Superintendent of the Department of Public Safety of the State of Louisiana; ARNOLD D. SPIERS, individually and as Commissioner of Public Safety of the City of Bogalusa; DORMAN A. CROWE, individually and as Sheriff of Washington Parish; Vernon Adams, individually and as an Officer Subordinate to the Sheriff of Washington Parish; BERNARD WILLIAM, individually and as a Police Officer of the City of Bogalusa; and their agents, successors, employees, and attorneys,

DEFENDANTS

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## COMPLAINT

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

I.

This is a civil action seeking a temporary restraining order, a preliminary injunction, a permanent injunction, monetary damages, and other legal and equitable relief to remedy and to enjoin the deprivation by defendants under color of State law of plaintiffs' rights, privileges and immunities secured by the First, Fourth and Fourteenth Amendments of the Constitution of the United States and statutes set out below. Jurisdiction of this Court is invoked pursuant to Title 28, U.S.C., Sections 1343 and 1393 and Title 42, U.S.C., Sections 1983, 1985 and the Civil Rights Act of 1964.

II.

A. All plaintiffs, except plaintiff Currier, are Negro citizens of the United States and residents of Bogalusa, Louisiana. They sue individually and on behalf of all others similarly situated Negro Citizens of the State of Louisiana, the Parish of Washington and the City of Bogalusa.

B. Plaintiff Charles Currier is a white citizen of the United States, a resident of New Orleans, Louisiana and a member of the Congress of Racial Equality. He sues individually and on behalf of all others similarly situated.

C. Plaintiffs bring this action on their own behalf and on behalf of others similarly situated pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting all the members of the classes mentioned in paragraphs A and B above who are so numerous as to make it impractical to bring them all before this Court. A common relief is sought. The interests of said classes are adequately represented by plaintiffs.

III.

Defendant Jesse H. Cutrer, Jr., is the Mayor of the City of Bogalusa. Defendant Thomas D. Burbank is Director and Superintendent of the Department of Public Safety, State of Louisiana. Defendant Arnold D. Spiers is the Commissioner of

Public Safety, City of Bogalusa, Louisiana, Defendant Dorman A. Crowe is Sheriff and ex-officio Tax Collector of Washington Parish, Louisiana. Defendant Claxton Knight is Chief of Police of The City of Bogalusa. Defendant John (first name unknown) Wascom is a Captain in the Police Department of the City of Bogalusa. Defendant Vernon Adams is a law enforcement officer subordinate to the Sheriff in Washington Parish. Defendant Bernard William is a police officer of the Bogalusa City Police force. They are sued individually and in their capacities as officials and law enforcement agents of the State of Louisiana, City of Bogalusa, and Parish of Washington.

The defendants are engaged in the enforcement and execution of the laws of the State of Louisiana, City of Bogalusa, and Parish of Washington, and have been and upon information and belief, are presently acting under color of authority of the State of Louisiana, Parish of Washington, and City of Bogalusa.

IV.

Defendants have for a period of time and, more particularly, since April 16, 1965, combined and conspired under color of statutes, ordinances, regulations, customs and usages of the State of Louisiana to deprive plaintiffs, and others similarly situated, of their rights, privileges and immunities, of their right to equal protection of the law, and of their right to due process of law, all secured by the Constitution and laws of the United States. Unlawful acts committed by defendants and their agents and employees against plaintiffs and others similarly situated are set forth in detail in the paragraphs below. The purpose and effect of these unlawful acts were to interfere with Negro citizens and with white and Negro civil rights workers and supporters (including plaintiffs) in the conduct of lawful civil rights activities, including picketing, exercising fundamental personal rights, and the advocacy of equal civil rights for Negroes, to punish them for engaging in such activities, and to attempt to prevent them from continuing such activities.

## V.

A. ✓At approximately 4:50 P.M. on or about April 16, 1965, Charles Williams, a Negro citizen of Bogalusa, was walking from Columbia Street to tell the Negro citizens picketing in the area to cease picketing. He was arrested by defendant Wascom. On the way to jail Williams asked what he was charged with, but the defendant Wascom refused to answer. At the station the officer booking Williams asked defendant Wascom what Williams was charged with. After a pause Wascom said, "Charge him with vagrancy and disturbing the peace." Williams attempted to place a telephone call, but Wascom would not let him complete it. At the station there were about six officers wearing hoods. One of them said to Williams, "You black sonofabitch, pull off that damn cap," whereupon Williams took off his cap.

B. On or about May 11, 1965, Negro citizens of Bogalusa were peacefully and lawfully picketing. A Negro citizen, Hattie Mae Hill, was told by a Bogalusa Police Officer, badge number 14, that: 1) he would "shoot my ass off if he got the chance," 2) "Better not come tomorrow," 3) Look like I was sick," 4) he wished he had some peanuts."

Ralph Graves while peacefully and lawfully picketing in front of Goldmans' was pushed and slapped by a white man. Graves then hit the white man and was immediately arrested, but the white man was not arrested. In the police car a state policeman asked a city policeman "where is that nigger from." Two city policemen asked him, "nigger what did you hit that white." At the jail the police tore his wallet and driver's license. The police also said, "lets whip that nigger," but no action was taken.

On the same date, plaintiff Charles Currier, a photographer, was slapped by a white man within several yards of some Bogalusa policemen. The police took no action to prevent this assault, or to arrest plaintiff's assailant.

C. On May 15, 1965, Hattie Mae Hill was lawfully and peacefully picketing in front of the American Department Store in

Bogalusa. A Bogalusa police officer, badge number 5, made the following remarks to defendant Officer Barlow: 1) "Look at that nigger, she likes you." 2) "called me all kinds of bitches." 3) "called me trash."

Officer number 5 of the Bogalusa Police force upon being offered some peanuts by a white bystander, directed the following remark at Marvin Austin, "Yes, give me some so I can show that monkey how to eat peanuts."

D. ✓On May 19, 1965, a group of Negro citizens, having been told by defendant Mayor Cutrer that as of May 16, 1965 all the parks in the City of Bogalusa were integrated, entered Cassidy Park in Bogalusa. While they were crossing the street from the parking area to the park grounds, a blue Chevrolet station wagon circled the park "four or five times," at a "very high rate of speed," attempting to run over Negro children crossing the street. The car was driven by a white man, and the incident was ignored by the police who witnessed the incident.

✓After approximately five minutes in the park, a group of white men assembled. A policeman went over to the group and talked with them for about two minutes. After he left, a white man came over to a group of Negroes and said," niggers are you having fun." They answered, "yes," whereupon he started swinging a belt at one of the Negro boys. The rest of the whites then came over and started throwing bricks, bottles, and sticks at the Negroes. The whites were also armed with guns, rifles, knives and brass knuckles. The Negroes started to run toward their cars. One Negro girl was beaten over the head with a stick. Marvin Austin was thrown to the ground and beaten. A Negro lady was knocked down and hit with a stick. It was observed during this incident that "The Bogalusa police was just grinning." A Mrs. Ward approached the scene where her son, Steven Ward, was being beaten. She was struck on the back of the neck. Four white men caught one Negro boy and started beating him with billy clubs and blackjacks. Linda Fisher was hit in the back with a stick. "It was a lot of children that got hit."

Three policemen chased Tressie Manning swinging clubs and shouting "run nigger run." At this point the police entered the fray and instead of protecting the Negro citizens, started beating the Negroes with their clubs. Defendant Captain Wascom pushed an old Negro man down and every time the old man would try to get up he would hit him." The K-9 police then turned their dogs loose on the Negroes, and the police joined the whites in their chase of the Negroes. The police shouted, "Get out of here niggers." ✓ One of the police dogs bit Gregory Hicks.

"The State Troopers were no damn good at all neither." Approximately three state troopers began beating the Negroes with their billets. One policeman pushed a Negro boy in his car and deliberately closed the door on his leg. After the Negroes had gotten into the cars to leave "the state police started to call us names, whores, bitches, black trash and etc."

✓ While Sam Barnes was standing outside his car, the K-9 unit deputy sheriff, defendant Vernon Adams, reached behind plaintiff Barnes and removed a gun from Barnes' car. The gun was lying on the car seat; it was not concealed.

✓ Defendant Adams pulled Barnes' right arm, "placed a night stick between my legs and josed me around." Then a state trooper and a K-9 officer, who was out of uniform handcuffed Barnes and took him to the city jail. The K-9 officer pushed Barnes in the back from the car to the station wagon, a distance of 15 to 20 feet, kicked him in the buttocks inside the jail, and stepped on plaintiff's heels during the walk to the cell. During the subsequent booking, the K-9 officer stomped on Barnes' feet. While transferring Barnes to the Franklinton Jail the K-9 officer threw Barnes' leg to one side saying, "You black sonofabitch, get your leg out of the way."

✓ At Franklinton the defendant K-9 officer pushed Barnes up a flight of stairs. During the night in the jail Barnes was beaten by three Negro prisoners who had each been paid a $1.00 to do so. The next morning, May 20, 1965 the defendant jailer told one of the Negro prisoners to beat Barnes again, but this was prevented by the sudden presence of F.B.I. agents. A Franklinton city policeman told Barnes "he wanted them to whip me good."

E. On or about May 20, 1965, Willow Pearl Thomas was pushed off the sidewalk by a group of white men wh. then pulled her dress up above the middle of her thigh. Defendant Bernard William and a state trooper saw this incident, but did nothing. ✓ The same white man later set fire to the hat of R. Lucas, a Negro, but the officer again did nothing. While picketing lawfully and peacefull one officer called Willow Pearl Thomas a "mean nigger." The sa officer asked a white bystander if he had any peanuts to give to Willow Pearl Thomas since she was a nigger. The same police officer asked a nearby plainclothesman if he had any room for monkeys.

F. ✓ On or about May 25, 1965 at approximately 12:30 A.M. Fletcher Anderson a Negro citizen, was arrested by defendant sheriffs Adams and Lowe for "improper muffler," and ordered to drive to the police station. At the station Anderson was punche in the side and stomach. While being booked, an unlawful search of his car revealed a gun. He was charged with having a conce weapon.

G. On or about May 28, 1965, several whites started a fig with some Negroes at 900 South Royal Street. The Negroes called the police. Thereafter they met a police car. A state trooper said to one of them, "come back here woman," to which Lamar Smi replied, "That's my mother you're talking to." The trooper re plied, "Well, this is the law you're talking to." The officers "got out and stood around Smith shaking billets."

H. On or about May 29, 1965, Negro citizens were picketing on Columbia Street in Bogalusa. Negro citizens Sam Barnes, Marvin Austin and Robert Hicks, were hit by white men in the pre sence of the police, and arrested but none of the white assail was arrested. Barnes and Austin were charged with disturbing peace. ✓ The police threatened to beat Austin at night.

Michael Williams, who was pushed and shoved by a "white guy" while picketing. The state police arrested both and told the Bogalusa police that the white man had been bumping Williams. Williams was charged with disturbing the peace, but the white man went free.

Barbara Hicks was arrested and charged with disturbing the peace while being threatened with battery by a white boy. Mrs. Oree Robinson, a Negro citizen who had warned the white boy not to hit Barbara Hicks was "grabbed, pulled, and snatched" by an officer as she left the scene. The officer put his arms around Mrs. Robinson's neck and choked her. Mrs. Robinson's son, Henry Robinson, told the police not to treat his mother that way, whereupon another officer grabbed him and choked him. "He said he would beat the hell out of me and my mimmie." Both mother and son were jailed for disturbing the peace.

I. On or about May 31, 1965 Negro citizens were peacefully and lawfully picketing in Bogalusa. Alcie Taylor, Jr., was struck in the mouth by a white bystander, and was arrested. Gerald Penton was pushed and shoved by a white bystander and when Penton punched back, he was clubbed on the head and arrested by a policeman. Carlton Short was simultaneously clubbed and handcuffed by two state policemen who reached him before the white crowd that was rushing his picket line. William Earl Peters was attacked and beaten by 10 to 15 white men. He was arrested for disturbing the peace by fighting.

A group of four Negroes were picketing the Winn-Dixie Store at approximately 1:30 P.M. A group of fifteen to twenty whites had assembled. Four State Troopers then arrived. Three of the whites talked to the State Troopers, whereupon the State Troopers then left the scene and went around the side of the store. Immediately thereafter the whites attacked the four Negroes. One of the Negroes, Thomas L. Williams, was struck in the forehead, knocked to the ground, and kicked in the ribs. A group of Negro boys heading towards Winn-Dixie were turned around by the State Troopers.

Cornelius Griffin, another Negro, was struck by three white men with a black-jack, iron pipe, and brass knuckles, respectively.

✓Bernice Wilson, a Negro citizen, 20, was slapped. She pointed out the assailants, who were getting into a car, to the State Troopers just returning to the scene. The troopers shouted "stop", but did nothing further to prevent the whites' escape.

After his beating by the whites, Thomas L. Williams escaped and sought refuge in the yard of the Williams household on Charlevoix Street in Bogalusa. His groans attracted the attention of the neighbors but the City Police drove right by him without stopping. A Mrs. Freddie Bolton pointed out the boy in the yard to the police but the police drove away and never returned. Finally, Williams father took him to the hospital where he met two city and one state policemen. After his physical examination the policemen asked Thomas L. Williams if he had been picketing with Cornelius Griffin. When he replied yes, they said, "You're under arrest for disturbing the peace." When his father Thomas Williams, Senior, protested they said, "Shut up or we'll carry you to jail." Upon continued protest, Williams' father was handcuffed and taken to the city jail. At the jail the police unhandcuffed him, and said, "Get on out of here, and go on home." The police then questioned Thomas L. Williams. When his answers were not loud enough, the police asked, "What you say, boy?" The police then locked up Williams, and after five minutes they came to his cell and said, "We're going to take you down and give you a good working over." When they got downstairs plaintiff was set free.

On that same date a white man beat a Negro truck driver in front of the Triangle Liquor Store in Bogalusa. Three State Troopers stood next to the truck and made no effort to stop the beating.

In another incident, Alcie Taylor, Sr., a Negro citizen, was accosted by a sheriff's deputy while walking down 5th Street in Bogalusa, on May 31, 1965. The deputy said, "Say boy, I want to see what's in your pockets." The sheriff thereupon unlawfully searched Taylor's person and found a knife. Taylor explained that the knife was a working tool which he used on his job at the Crown Zellerbach Corporation, and that he was on his way to work at the Crown Zellerbach Corporation. The sheriff then handcuffed Taylor, pushed him on the sidewalk and into the patrol car. At the station it took two men to release the handcuff "because he (the deputy) had put them on so tight." On June 1, 1965 Taylor was examined by Dr. F. J. Fester of the Bogalusa Medical Center who said that the handcuffs had affected a nerve and that it would take two or three weeks for the arm to regain feeling. Plaintiff was charged with carrying a concealed weapon, and bail was set at $300.00.

U. S. Air Force Sergeant Leon Mills, Jr., a Negro, having driven from New Jersey via Illinois to Bogalusa was arrested because he was driving with out of state license plates, and because he did not have his orders on him. Mills produced an identification card which showed he was in the U. S. Air Force. Within thirty minutes his orders were delivered to the jail, but he was not released "because the police could not read them." Armed Forces Police from New Orleans read and verified the orders the next day. Mills was released on $50.00 bond, after having spent thirteen hours in jail.

J. On or about June 1, 1965 a Negro citizen (last name Manning), was picketing Coses Shoe Store, and a white man walked into him. "I guest he thought that I was going to go around him but I didn't." Manning, but not the white man, was arrested by the State Police for walking too far in the street and charged with disturbing the peace by fighting. Bail was set at $300.00 and paid.

K. On June 22, 1965, three Negro citizens Elmore Bonner, Marvin Austin, and Maxine Britt, were lawfully and peace picketing in Bogalusa, Louisiana when they were arres Bogalusa police on the following charges:

| | |
|---|---|
| Elmore B<sup></sup>ar onner: | vagrancy and loitering, despite the fact that at the time of his arrest Bonner was employed and had in his possession $12.00; |
| Marvin Austin: | vagrancy, despite the fact that at the time of his arrest Austin had in his possession $50.00; |
| Maxine Britt: | disturbing the peace, despite the fact that at the time of her arrest she was lawfully exercising her right to assembl peacefully. |

Also, on June 22, 1965, Michael Jones, a Negro citizen employed as a Project Director by the Congress of Racial Equality, was driving an automobile in Bogalusa and noticed several policemen in front of a residence on Poplar Street. Jones stopped the car to inquire of the police officers what the disturbance was, and they told him to move on. Jones thereupon moved the car about half a block, stopped, and then Jones and another passenger in the car got out and entered the yard of a private dwelling on their way to make a telephone call from this dwelling. Jones had been standing on this private property for about one minute and durin this time had said nothing to the police officers, whereupon defendant Adams walked up to Jones and said that Jones was under arrest for interfering with an officer. At the Bogalusa police station, while being booked, Jones was struck on the back of the head, causing him to spin around and he observed that it was defendant Adams who had struck him, but Jones did not see what defendant Adams struck him with because Adams had by this time put his hands behind his back. As Jones returned to the counter to be booked, defendant Adams "kicked me in the stomach with his boot just below the belly button and the other arresting officer hit me in the stomach with his fist." At the police station, Jones was unlawfully charged with failing to move on, interferin with an officer, and vagrancy. At the time of his arrest Jones had on his person $27.50.

L. On or about May 20, 1965, defendant Mayor Cutrer closed all of the parks in the City of Bogalusa. However, since the closing of the parks, white citizens have used the parks with the tacit acquiesence of the Bogalusa police while Negro citizens have been unlawfully and discriminatorily prevented from using the parks by the threat of legal punishment for violating the order closing the parks.

VI.

It is apparent from the above acts that plaintiffs and the Negro citizens of Bogalusa as a class have been unlawfully deprived of their federally protected rights under the first, fourth and fourteenth Amendments to the United States Constitution and under the United States statutes.

The law enforcement officers of the State of Louisiana and the City of Bogalusa have engaged in illegal activity, harassment, intimidation and physical brutality by committing the following acts against plaintiffs and the Negro citizens of Bogalusa:

1) Unlawful assaults, beatings and physical abuse;
2) Illegal and discriminatory searches and seizures;
3) Inflicting unlawful punishment by:
    a) coercive and abusive interrogation;
    b) failure to advise grounds of arrest;
    c) denying opportunity to make phone calls;
    d) failing to take prisoners promptly before a committing magistrate;
    e) failure to advise of right to counsel; and
    f) failure to advise of right not to incriminate oneself.

4) Failure to protect prisoners in custody from and deliberately provoking and causing physical abuse by jailers, prisoners, and police.

5) Requiring bail for unwarranted arrests;

6) Unwarranted prosecutions, intimidations, threats, and harassments;

7) Failure to provide police protection from white mobs;

8) Aiding and abetting white mobs in unlawful assaults upon and harassment of Negro citizens exercising the rights of United States citizens;

9) Addressing Negroes in threatening, obscene, and insulting language.

10) Unequal and discriminatory application of the law to Negroes.

VII.

Defendants' pattern of conduct and action described herein has resulted in and continues to effect an unconscionable and shocking deprivation of plaintiffs' rights secured by the First, Fourth and Fourteenth Amendments to the United States Constitution. Defendants' conduct and the conduct of their agents and employees has been and is being carried on with the purpose and effect of harassing plaintiffs and punishing them for, and detering plaintiffs from, exercising a) their federally secured rights under the 1964 Civil Rights Act without abridgement or discrimination by reason of race, and b) their federal constitutional rights of free speech, assembly and association to protest and work to remedy conditions of racial discrimination which Louisiana maintains by statute, ordinance, regulations, custom, usage, and practice. This harassment is pursuant to a policy of racial segregation and discrimination actively encouraged, followed and enforced by legislation and by action of the executive and judicial branches of the State of Louisiana.

VIII.

Plaintiffs allege that the above described acts by defendants were unlawful and contrary to rights guaranteed by the State and Federal Constitutions and laws and designed to further intimidate and prevent plaintiffs from not only exercising their constitutionally protected rights but also encouraging and aiding others to advocate and work for equal civil rights for Negroes and of persons within the State of Louisiana and the United States. Plaintiffs further allege that they are being prosecuted for acts done under color of authority derived from the Federal Constitution and laws providing for equal rights, that is, the First and Fourteenth Amendments to the Constitution of the United States, and 42 U.S.C., Section 1983.

## IX.

Plaintiffs allege: (a) that they have no adequate remedy at law; (b) that plaintiffs have planned lawful demonstrations to assert their federal constitutional and civil rights in the City of Bogalusa for this weekend, June 25-27, 1965; (c) that unless this court grants an immediate temporary restraining order or a preliminary injunction plaintiffs will continue to be illegally assaulted, harassed, arrested, prosecuted, and otherwise intimidated for and restrained from attempting to exercise or assist others in exercising their federal constitutional rights; (d) that unless defendants and their agents and employees are immediately restrained, they will continue to interfere with plaintiffs' rights to picket and assemble lawfully for the purpose of gaining employment and asserting their constitutional and civil rights on threat of arrest and prosecution contrary to the Fourteenth Amendment to the United States Constitution; (e) that unless defendants are restrained from engaging in abusive and intimidating practices as set out above, plaintiffs will continue to suffer both mental and physical anguish as a result of fear engendered by such abusive acts and practices of defendants as executive and law enforcement officers of the State of Louisiana, Washington Parish, and City of Bogalusa, and plaintiffs will continue to be denied due process and equal protection of the laws; and (f) that unless defendants, Mayor Cutrer, Crowe, Spiers, Knight and Burbank are immediatly restrained from maintaining segregated jail and courtroom facilities, in and adjacent to the Bogalusa City Courthouse, and from allowing members of the public to attend courtroom hearings and from maintaining segregated parks in Bogalusa plaintiffs and others similarly situated will be subjected to continued denial of the equal protection of the laws.

WHEREFORE, plaintiffs pray that the Court expeditiously hear and determine this matter and upon determination thereof issue a temporary restraining order, preliminary injunction, and final permanent injunction restraining each of the defendants and their agents, servants, employees, attorneys, successors in office, and all persons in active concert and participation with them who receive notice of the order as follows:

(1) From committing any act of violence or threatened violence against plaintiffs or any person for the purpose of preventing or discouraging such person or any other person from picketing, using the city parks in Bogalusa, assembling, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or assisting or encouraging others to do the same.

(2) From molesting, interfering with, interrogating, searching, arresting, threatening to arrest, plaintiffs or any person for the purpose of preventing or discouraging such person or any such person from picketing, assembling, using the public parks in Bogalusa, or exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or from encouraging and assisting others to do the same.

(3) From failing to protect Negroes from,

a) physical assaults and beatings;
b) harassment and intimidation at the hands of white citizens for the purpose of discouraging plaintiffs from picketing, assembling, using the public parks in Bogalusa, or exercising or advocating other fundamental personal rights, or assisting or encouraging others to do the same.

Summary

(4) From harassing, threatening intimidating or punishing plaintiffs and those similarly situated, or any persons, by any of the following acts or practices in pursuance of a deliberate policy of racial discrimination (a) Discriminatory searches of their persons, automobiles, dwellings or offices; (b) Subjecting them to verbal abuse, including cursing, insults, namecalling, and threats; (c) Subjecting them to coercive and abusive interrogations; (d) Subjecting them on account of race to arrests for purposes of harassment and interfering with the exercise of their federally protected rights. (e) Permitting prisoners or any other

persons to physically abuse persons in custody or in jail by assaulting or striking them or subjecting them to any acts or threats of violence;

(5) From combining or conspiring among themselves or with other persons to engage in any of the conduct specified in the immediate preceding four sub-paragraphs, or counseling or advising other persons to do any of the acts mentioned therein or to intimidate, threaten, or coerce any persons by the application of economic penalties or otherwise.

A. (1) Plaintiffs further pray for an order directed to defendants, Cutrer, Crowe, Spiers, Knight and Burbank, and their agents, servants, employees, attorneys, successors, and all persons in active concert and participation with them who receive notice of this order from enforcing racial discrimination or segregation in the jail and courtroom facilities in the City of Bogalusa, from preventing spectators to attend public hearings in the Bogalusa Courtroom.

(2) Plaintiffs further pray for an order directed to defendants, and particularly to Mayor Cutrer, to open the public parks of the City of Bogalusa, in order to terminate the discriminatory use of the public facility in violation of the Civil Rights Act of 1964.

B. Plaintiffs further pray that each of the defendants be served with a copy of this Court's judgment and that the defendants, Cutrer, Crowe, Knight, Burbank and Spiers be ordered to distribute copies of any injunctive order granted herein to all of their subordinates (including deputies, police officers, investigators, and other law enforcement personnel) together with a directive ordering compliance, and ordering that they on their own initiative take prompt steps to discipline any subordinate whom they may find to have violated the terms of the Court's order.

C. Plaintiffs pray that this Court retain jurisdiction of this case for the purpose of enforcing any injunctive order issued herein and for such other orders and proceedings as may become necessary in connection therewith.

D. Plaintiffs further pray for a judgment against defendants individually and in their official capacities for damages inflicted upon plaintiffs as a result of defendants' unlawful ac in the following amounts:

1. Claxton Knight - $125,000.00.
2. Thomas D. Burbank - $100,000.00.
3. Arnold D. Spiers - $75,000.00.
4. Dorman A. Crowe - $75,000.00.
5. John (first name unknown) Wascom - $15,000.00.
6. Vernon Adams - $35,000.00.

E. Plaintiffs further pray that they be accorded their costs, including reasonable attorneys' fees, as well as such other and further relief as may appear to the Court to be equitable and just.

Respectfully submitted,

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
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ATTORNEYS FOR PLAINTIFFS

BY: Nils R Douglas

OF COUNSEL:
VICTOR P. Le BEAU
L C L C
1911 TERPSICHORE STREET
NEW ORLEANS, LOUISIANA 70113

## VERIFICATION

I, ROBERT F. COLLINS, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana and of the U. S. District Court for the Eastern District of Louisiana;

That I am the duly authorized attorney for plaintiffs herein authorized to prepare and verify the annexed complaint;

That I have read the annexed complaint and know the contents thereof;

That I know of my personal knowledge that all facts stated therein are supported by signed statements or are stated on information and belief;

That as to subject matter I believe the complaint to be true and:

That I sign the verification on behalf of the plaintiffs, because the annexed complaint deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowledge than the plaintiffs.

Robert F. Collins

ROBERT F. COLLINS

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 24TH DAY OF JUNE, 1965.

Nils R Douglas

NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ROBERT HICKS, ET ALS.

vs.

CLAXTON KNIGHT, ET ALS.

CIVIL ACTION
NO.

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## ORDER TO SHOW CAUSE

Upon the verified complaint herein,

IT IS ORDERED that defendants show cause at the United States District Court for the Eastern District of Louisiana in the United States Courthouse at , Louisiana, why the Temporary Restraining Order herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that copies of this order to show cause be served upon all parties hereto immediately, and that the United States Marshal endorse his return on the original hereof.

DATED:

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

ROBERT HICKS, ET ALS.

vs. CIVIL ACTION

CLAXTON KNIGHT, ET ALS. NO. 15727

DIVISION B

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## MOTION FOR A PRELIMINARY INJUNCTION

Upon this verified complaint, the plaintiffs move this Honorable Court to issue a preliminary injunction, enjoining defendants, their employees, agents, successors and all persons acting in concert or participation with them from:

(1) Committing any act of violence or threaten violence, against plaintiffs or any person for the purpose of preventing or discouraging such person from picketing, assembling, using the public parks in Bogalusa, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or assisting or encouraging others to do the same;

(2) Failing to protect plaintiffs and others similarly situated from:

a) Physical assaults and beatings;

b) Harassment and intimidation, at the hands of white citizens for the purpose of discouraging plaintiffs and others similarly situated from picketing, using the public parks in Bogalusa, assembling, or exercising other fundamental personal civil rights, or encouraging others to do the same.

(3) Molesting, interfering with, interrogating, discriminatorily, searching and arresting, threatening to arrest, plaintiffs or any person for the purpose of preventing or discouraging such person from picketing, assembling, using the public parks in Bogalusa, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or from encouraging and assisting others to do the same.

(4) From harassing, intimidating or punishing plaintiffs, and those similarly situated, or any persons by any of the following acts or practices in pursuance of a deliberate policy of racial discrimination under color of authority;

(a) Discriminatory and unlawful searches of their persons, automobiles, dwelling, or offices;

(b) Subjecting them to verbal abuse, including cursing, insults, name-calling, and threats;

(c) Subjecting them to coercive and abusive interrogations;

(d) Subjecting them on account of race to arrests and prosecutions for purposes of harassment and interfering with the exercise of their federally protected rights.

(e) Permitting prisoners, policemen, sheriffs or any other persons to physically abuse persons in custody or in jail by assaulting or striking them or subjecting them to any acts or threats of violence.

(5) From combining or conspiring among themselves or with other persons to engage in any of the conduct specified in the immediate preceding four sub-paragraphs, or counseling or advising other persons to do any of the acts mentioned therein or to intimidate, threaten, or coerce any persons by the application of economic penalties or otherwise.

(6) From enforcing a policy of racial discrimination or segregation in the jail and courtroom facilities in the City of Bogalusa.

(7) From preventing spectators to attend public hearings in the Bogalusa Courtroom.

(8) From denying Negro citizens the use and enjoyment of the Bogalusa City public parks.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
ATTORNEYS FOR PLAINTIFFS
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: Nils R. Douglas

OF COUNSEL:

VICTOR P. Le BEAU
L C L U .
1911 TERPSICHORE STREET
NEW ORLEANS, LOUISIANA 70113

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ROBERT HICKS, ET ALS.

vs.

CLAXTON KNIGHT, ET ALS.

CIVIL ACTION
NO.

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## TEMPORARY RESTRAINING ORDER

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA;

Whereas in the above named cause it has been made to appear by the verified complaint filed herein on the day of 1965, presented to the Honorable , Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue without notice, because immediate and irreparable injury, loss and damage will result to the plaintiffs before notice can be served and a hearing had thereon; and

Whereas the unlawful acts of defendants, their agents, employees, representatives and other persons in active concert with them, under color of statute, ordinance, regulation, custom or usage of the State of Louisiana have subjected, or caused to be subjected, plaintiffs and others similarly situated to the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States;

Whereas notice and hearing before entering a temporary restraining order should not be required because plaintiffs have no adequate remedy at law;

NOW, therefore, on motion of Plaintiffs;

IT IS ORDERED that defendants, their agents, representatives, employees, successors, and all persons in active concert with them be and the same are enjoined from:

(1) Committing any act of violence or threaten violence, against plaintiffs or any person for the pupose of preventing or discouraging such person from picketing, assembling, using the public parks in Bogalusa, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or assisting or encouraging others to do the same;

(2) Failing to protect plaintiffs and others similarly situated from:

a) Physical assaults and beatings;

b) Harassment and intimidation, at the hands of white citizens for the purpose of discouraging plaintiffs and others similarly situated from picketing, using the public parks in Bogalusa, assembling, or exercising other fundamental personal civil rights, or encouraging others to do the same.

(3) Molesting, interfering with, interrogating, discriminatorily, searching and arresting, threatening to arrest plaintiffs or any person for the purpose of preventing or discouraging such person from picketing, assembling, using the public parks in Bogalusa, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or from encouraging and assisting others to do the same.

(4) From harassing, intimidating or punishing plaintiffs, and those similarly situated, or any persons by any of the following acts or practices in pursuance of a deliberate policy of racial discrimination under color of authority;

(a) Discriminatory and unlawful searches of their persons, automobiles, dwelling, or offices;

(b) Subjecting them to verbal abuse, including cursing, insults, name-calling, and threats;

(c) Subjecting them to coercive and abusive interrogations;

(d) Subjecting them on account of race to arrests and prosecutions for purposes of harassment and interfering with the exercise of their federally protected rights.

(e) Permitting prisoners, policemen, sheriffs or any other persons to physically abuse persons in custody or in jail by assaulting or striking them or subjecting them to any or threats of violence.

(5) From combining or conspiring among themselves or with other persons to engage in any of the conduct specified in the immediate preceding four sub-paragraphs, or counseling or advising other persons to do any of the acts mentioned therein or to intimidate, threaten, or coerce any persons by the application of economic penalties or otherwise.

(6) From enforcing a policy of racial discrimination or segregation in the jail and courtroom facilities in the City of Bogalusa.

(7) From preventing spectators to attend public hearings in the Bogalusa Courtroom.

(8) From denying Negro citizens the use and enjoyment of the Bogalusa City Public Parks.

DATED:

UNITED STATES DISTRICT JUDGE

THE FOLLOWING PAGES ARE THE BEST AVAILABLE.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISISNA
NEW ORLEANS DIVISION

ROBERT HICKS, GAYLE JENKINS,
FLETCHER ANDERSON, ROYAN BURRIS
CHARLES SIMS, and SAM BARNES

CRIMINAL ACTION
NO.

v.

STATE OF LOUISIANA

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## PETITION FOR REMOVAL

1. Petitioners are adult Negro residents of the City of Bogolusa, and are citizens of the State of Louisisna, and of the United States.

2. On October 19, 1965 an Information was filed in the Juvenile Court of the City of Bogolusa in the Twenty Second Judicial District Court of Louisiana, charging petitioners with violating the provisions of L.S.A.-R.S. 14:92 and 14:92.1

> .. in that, they all...did intentionally entice, aid or permit pupils of the Bogolusa City School, under the age of 17 years, to violate the laws of the State of Louisiana, and particularly the compulsory attendance of school children to attend schools during regular school hours, and did encourage cause or contribute the delinquency of said children by encouraging, causeing and contributing to the absence of said children from school during regular school hours.

A true copy of the Information (numbered J 65-155) is attached to this petition as Exhibit A. These prosecutions are removed by authority of 28 V.S.C. Section 1443 (1) (2) on the grounds hereinafter stated.

3. Petitioners proceed jointly on a single application because their petition is based on common questions of law and fact, arising from a single set of circumstances, because they are charged under the same statute, and because they are charged in the same bill of information. Moreover, counsel filing this petition are presently engaged in [illegible] amount of legal works arising from other criminal [illegible] civil rights, of equal urgency with these cases. [illegible] petition was authorized by the Federal Court of [illegible] Circuit in Leftn v. City of Hattiesburg, 33[illegible]

4. Petitioners have been and are among the foremost leaders of the Civil Rights movement in Bogolusa, Louisiana. All are members of the Bogolusa Voters League, [illegible] which has been since February 1965, and [illegible] and other peaceful

and lawful demonstrations for the purpose of dramatizing the quest of Negro citizens for equal civil rights and for equal employment opportunities established under the 1964 and 1965 Civil Rights Acts, and under the Fourteenth Amendment to the Constitution of the Unites States.

All, except petitioners Barnes are members of the Bogolusa Voters Leagues' Executive Board which makes policy and negotiates with city officials on racial grievances. Petitioner Hicks is the Vice-President of said organization; petitioner Jenkins is its secretary. All are well known civil rights leaders.

5. The Bogolusa Voters League Youth Organization is a civil rights organization, comprised of the Negro Youth of Bogolusa, which has through peaceful demonstrations and marches attempted to achieve equal civil rights for Negro citizens in Bogolusa. Its officers are Dan Expose, President, Leonard McGee, Vice President, Hattie Mae Hill, Secretary, and Cozzy Peters, Treasurer. It is a separate and distinct organization from the Bogolusa Voters League.

6. On Tuesday evening October 12, 1965, the Bogolusa Voters League Youth Organization met to discuss the action of the Negro teachers who, earlier that day, had crossed their picket line which was protesting segregation at the Washington Parish Fair. The students voted to boycott school the next day to protest the teachers' actions.

7. OnWEDNESDAY, October 13, 1965 the Negro students of Bogolusa walked off the campus before school began, went to the Union Hall in Bogolusa, and dispersedthat morning.

8. Because of the Parish Fair school recessed for the duration of that week. HOwever the students continued to meet and decided to continue demonstrating , to protest inferior conditions at their schools.

9. On October 18, 1965 the Youth Organization officers led a march to the Bogolusa City School Board, and there presented a list of student demands to improve inferior conditions at the Negro schools

10. On October 19, 1965 the students again marched to the school Board where the Youth Organization officers requested an answer to their demands of the previous day. M.J. Isreal, superintendant of the School Broard refused to talk to them.

11. On October 18, 1965, the School Board, an advice from the District Attorney of the Twenty-Second Judicial District, decided to file injunctive proceeding and criminal actions against "those responisible for the absenteeism" to force the students back to school

12. On October 19, 1965, the Information in the instant case was filed.

13. On October 20, 1965, the Twenty-Second Judicial District Court issued a temporary restraining order against the Bogolusa Voters League, its members, Lemuel Barnes III, your petitioners, and against A.Z. Young, Mary Williams, R.T. Young, and Joseph Sartin, all of whom are members of the Bogolusa Voters League Executive Board.

14. The order, in language virtually identical to the Information against petitioners, enjoined defendants from

> enticing, compelling, permitting, and /or soliciting any pupil of the public schools of the City of Bogolusa to absent themselves from said schools for the purposes of picketing, marching, parading...

A copy fof this order is attached to the petition as Exhibit B.

15. Early October 20, 1965 your petitioners were arrested and incarcerated. The Honorable Judge, who presides over the Bogolusa juvenile Court, set bond at $1,500 for the male defendants, and at $1,000 for petitioner Jenkins.

During that morning and afternoon many Negroes were arrested in Bogalusa for various offenses.

Petitioners were transferred to the St. Tammany Parish Jail in Covington because of crowded conditions in Bogolusa.

On the night of October 20, 1965 Negroes were savagely and mercilessly beaten by Bogolusa City Police and Washington Parish sheriffs' officials. This incident formed the basis of the second contempt proceeding against said officials for violating the federal injunction issued in Hicks v. Knight, Civil Action No. 15,727 (Eastern District of Louisiana) A decision is pending in this matter.

GROUNDS FOR REMOVAL

16. These prosecutions violate petitioners rights to the equal protection of the law. Petitioners have been arbitarily singled out for prosecution because of their leadership in the Bogolusa civil rights movement.

This is evidenced by the fact that the State, on October 20th, enjoined the great majority of the Bogolusa adult Negro population, as members of the Bogolusa Voters League from doing the same alleged acts for which petitioners are being prosecuted. Yet none, including the ~~four~~ five specifically named in the order with petitioners have been prosecuted. The arbitrariness of the prosecutions denies petitioner s equal protection of the law.

17. One primary purpose of these prosecutions is to harrass and punish petitioners for their civil rights activities and to deter them, and Negro residents of Bogolusa generally from attempting to achieve their equal civil rights.

The state law of contributing to the delinquency of minors has been applied to deprive petitioners of their equal civil rights; the charges were effected for reasons of racial discrimination and constitute a denial of petitioners constitutional right to the equal protection of the law. Removel of this action is necessary because petitioners have been denied and cannot enforce in the courts of the state their rights under the equal protection clause of the fourteenth amendment.

18. Because of the events described herein, and because of the continuous civil rights activity in Bogolusa since February, 1965, the white citizens of that city and of Washington Parish are deeply prejudiced against any persons associated with the civil rights.

The Negro citizens of that community have under petitioners' leadership:

a. Filed suit to integrate restaurants, motels, and theatres.
b. Filed suit to desegregate the Bogolusa Charity Hospital
c. Filed suit to achieve token desegregation of the school system
d. Filed complaints under Title VII of the 1964 Civil Rights Act to eliminate discrimination at Crown Zellerbach, the largest employer in the town.
e. Filed complaints under Title VI of the 1964 Civil Rights Act to withhold federal assistance from proposed housing project.
f. Filed complaints against the local poverty program to withhold funds until a representative board can be achieved
g. Filled suit to enjoin the enforcement of a picketing ordinance.
h. Forced the intervention of the Department of Justice in a number of suits.
i. Focused national attention on the racial turnoil din that city.
j. Filed suit against the Bogolusa City Police and Washington Parish sheriffs' officials to enjoin brutality during civil rights demonstrations.

The latter suit, *Hicks v. Knight*, Civil Action No. 15,727, (E.D.) Louisiana) is an accurate reflection of the extreme commuity hostility towards the civil right movement. On July 10, 1965, the United States District Court entered a preliminary injunction against the Bogolusa City Police, including the chief of police and the Commissioner of Public Safety, and against Washington Parish sheriffs' officers, enjoining defendants from preventing or discouraging plaintiffs from picketing, assembling peaceably and advocoting equal rights for Negroes *by committing or threatening to commit acts of violence* or encourageing others to do so, by failing to use all reasonable means to protect plaintiffs from physical assaults and beatings, and by harassing, intimidating, or in a discriminatory manner punishing plaintiffs and those similarly situated. (emphasis added)

Petitioner Hicks's son was a plaintiff in this case, and petitioners Hicks, Barnes and Anderson were important witnesses.

On July 30, 1965, after a civil contempt hearing the United States District Court held chief Knight and Commissioner Spiers in comtempt and ordered them to adopt and publish a plan of police protection so as to carry out fully the July 10, 1965 order.

On November 1, 1965 this Court again ordered defendants Knight, Spiers, and two deputy sheriffs to show cause why they should not be held in civil contempt of the July 10, 1965 order. This order arose out of the vicious series of beatings on the night of October 20, 1965 referred to in paragraph 15 above.

A final measure of community hostility against petitioners is found in the extent of activity in Bogolusa and Washington Parish by the original Knights, of the Ku Klux Klan, an organization devoted to the maintenance of white supremacy through force, violence and intimidation. See United States v. Original Knights of the Ku Klux Klan, 34 U.S.L. Week 2306 (ED La. 1965).

Petitioners who have been at the forefront of the civil rights movement, cannot secure a trial consistent with their Federal Constitutional rights in the juvenil court in Bogolusa. Because of this hostile and prejudiced community feeling, petitioner is denied and cannot enforce in the courts of the State of Louisiana, and particularly in the Twenty-Second Judicial District, State and City Courts, his rights to a fair trial guaranteed by the equal protection and due process clauses of the Fourteenth Amendment.

19. The judge presiding in the Bogolusa Juventile Courts was elected under a statute governing voter qualifications that has been declared unconstitutional by the United States Supreme Court, on the ground that it operates to discriminate against Negroes. See Louisiana v United States. 380 U.S. 145 (1965).

Negro disfranchisement denied petitioners the right to vote and to have all eligible members of their race vote for the judge as district attorney in this case. It deprived them of a critical opportunity to elect a judge sensitive to their cause. Since this situation resulted from a facially unconstitutional statute, it constitutes a basis for removal under Strauder v. West Virginia, 100 U.S. 303

The political and other pressures on the Judge of the Juvenile Court in Bogolusa and on the Judges in Washington Parish make it impossible for them to rule in petitioners' favor in this case. For they are responsible to an hostile electorate which is deeply prejudiced against petitioners and their cause. This public robs them of the freedom of impartiality.

20. Petitioners have been and are being denied due process of law in the juvenile court. The arrest and prosecution against them have been effectuated without probable cause to believe

that they have committed the offense with which they have been charged.

21. Mofeover, the Information is unconstitutionally vague in violation of Article I, Section 10 of the Louisiana Constitution, of L.S.A.-R.S.--15:727, and in violation of the Sixth and Fourteenth Amendments to the United States constitution.

It is fatally defective because:

a. It fails to specify the circumstances and facts showing how each defendant contributed to the delinquency of minors.

b. It fails to specify the laws defendants allegedly caused minors to violate.

c. It fails to identify one single minor lwho suffered from defendants unspecified acts.

22. To rectify these defects defendants filed an application for a bill of particulars, a copy of which is herein attached as Exhibit C. The State, in its answer, refused, or was unable to name one pupil who suffered at defendants' hands, although many students were absent from school on October 13, and refused to cite the statutes defendants allegedly caused the unspecified minors to violate, although the "general compulsory school attendance law' which they did cite, contains several possibly relevant statutes. A copy of this answer is attached as Exhibit D.)

The state court has therefore made it virtually impossible for defendants to prepare adequa\tely for their defense, since defendants do notknow which minors they are charged with harming, nor which statutes they allegedly caused the unspecified minors to violate.

23. Your petitioners speculate that the state is prosecuting them for allegedly causing students to violate L.S.A.-R.S. 17:233. This statute prohibits habitual absence from school. Since petitioner are charged with causing students to violate Louisiana law only on October 13, they cannot possibly have "aided, enticed or permitted" students to habitually absent themselves within L.S.A.-R.S. 17:233. An absence of one day is hardly habitual.

The information is , therefore, defective; the resultant prosecution denies petitioners their right to due process of the law. One cannot be constitutionally convicted for enticing conduct which is not punishable. Peterson v. City of Greenville, 373 U.S. 244.

In fact, no school child in Bogalusa is charged with being a delinquent by being absent from school on October 13, 1965.

The use of L.S.A.-R.S. 14:92, 14:92.1 and the "general compulsory school attendance law", particularly L.S.A.-R.S. 221, violates defendants substantive and procedural rights under the Fourteenth

Amendment, because only by torturing the intent of the legislature can the alleged acts of defendants be considered a violation of the compulsory school attendance law.

24. Further certain possible statutes which defendants allegedly caused minors to violate are of questionalbe repute. L.S.A.-R.S. 17:221 and 17:233 were repealed by Act 128, section 1 of 1962, and were reinstated in 1964 by Act No. 109. By authority of L.S.A.-R.S. 17:237, the Governor still retains the power "in any other emergency..." to suspend L.S.A.-R.S. 17:221 and 17:233.

Violation of statutes which express no strong public interest, and about which the governing body has shown considerable reluctance, cannot be considered a delinquent actasuch as would "debase or injure the morals, health or welfare" of a child. See L.S.A.-R.S. 14:92.1B.

Defendants alleged acts, and the acts of the students seek not to avoid school and education, but rather to attend school where a decent and equal education is possible. It is almost a waste of time to attend schools where there are no adequate facitities for learning.

25. One admitted purpose of these prosecutions was to force the students back to school--to prevent their engaging in peaceful demonstrations, to protest inferior conditions at the segregated Negro schools in Bogalusa.

These inferior conditions are partially set forth in the students' demands to School Board presented after their March on October 18. Their demands which Superintendant Isreal refused to discuss are:

a. That all students immediately be supplied with all books and supplies necessary for our studies.
b. That our science laboratories be brought up to date with equipment and supplies.
c. That the equipment of all Physical Ed. departments be brought up to date with that of the white schools.
d. That at least one doctor or nurse be assigned to each school.
e. That at least one foreign language be offered at Central Memorial High School, besides French.
f. That the shop teachers refrain from sending students out to mow the Superintendants lawn, and work in his house, and that a worthwhile program be adopted and sufficient equipment be installed.
g. That we have more and better qualified teachers.
h. That all needed repairs and remodeling of the school premises be acted upon immediately. Specifically that central heating be provided in all schools.

Further grievances are:

i. Books - students pay original price for worn out books.
    8 1. High School Algebra - 300 students - 48 books
    2. Shorthand - 28 students - 6 books
    3. Physical Ed. classes have to share books; don't even have separate books for boys and girls.
j. Laboratory Equipment
    1. Microscopes, newer equipment
    2. Home Economics - more sewing machines - glasses which are chipped and cracked, use stools because lack chairs.

k. Decent blackboards needed.
l. Business - more electric typewriters - more standard IBM business machines.
m. Physical Ed. - need weights, bars, more mats, balls, bats, bath heating.
n. Language lab - tape recorders and records needed.
o. Math - better curriculum in modern math.

The desegregation of public schools has been the law of the land since 1954. Brown v Board of Education, 347 U.S. 483. Despite this national policy formulated 12 years ago, only 5 Negro students attend integrated schools in Bogalusa. And this through court order. Jenkins v. City of Bogalusa School Board, Civil Action No. 15,798 (E.D. La.)

The State cannot, under the equal protection clause, enforce the compulsory school attendance law where the schools are segregated, and where the Negro schools are inferior, because it cannot enforce segregation.

The prosecution of your petitioners for allegedly "aiding, enticing or permitting" students to achieve equal educational opportunities, especially when used as a device to force students back to inferior segregated schools, is prosecution in aid of racial segregation.

Petitioeers have, therefore, been denied their rights to equal protection. Their conviction in the Juvenile Court is prohibited by Shelley v. Kraemer, 334 U.S. 1.

26. These prosecutions violate defendants rights to free speech and assembly under the first and fourteenth amendments to the United States Consitution.

a. The prosecutions are for "aiding, enticing, permitting, encouraging, causing and contributing." The alleged unspecified acts forming the basis of these charges, are verbal and/or physical acts protected by the first amendment.

b. The purpose of these prosecutions to end thestudents' peaceful demonstrations and petitions, violates defendants rights to acquiesce in or condone acts which are themselves protected by the first amnndment. Thornhill v. Alabama, 310 U.S. 88.

c. Said prosecutions violate the students' rights to free speech, assembly and petition under the first amendment. One cannot speak freely knowing it may lead to prosecutions of others in the community.

27. Petitioners deny the allegations in the information, but aver in the alternative that any of the unspecified acts they may have committed, occured under color of authority of the first and fourteenth amendments to the constitution of the United States, and under color of authority of the 1964 Civil Rights Act. This case is, therefore, removable under Section 1443 (2).

Whereupon, under the authority of 28 U.S.C. Section 1443(1) and (2), and pursuant to the provisions of 28 U.S.C. Section 1446, petitioners hereby remove to this Court Criminal Action J-65-155 from the Juvenile Court of the City of Bogalusa and of the Twenty-Second Judicial District of the State of Louisiana. Petitioner prays for such relief as from time to time this Court may deem proper.

ROBERT F. COLLINS
NILS R. DOUGLAS
HARRIS DAVID
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: ______________________________

# ATTORNEY'S AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

I, the undersigned, after being duly sworn, do depose and say,

1. That I am the duly authorized attorney for petitioners herein.

2. That I am duly qualified to practice in the State of Louisiana ~~, and in the United States District Court for the Eastern~~ District of Louisiana.

3. That I have read the petition and know the contents thereof.

4. That the facts contained therein are supported by statements, interviews, public records, or are stated upon information and belief.

5. That the facts therein are true as stated to the best of my knowlege, information and belief.

6. That I sign this affidavit on behalf of petitioner plaintiff, because it deals with questions of fact and/or law of which I, as an attorney, have more knowlege than petitioners.

ROBERT F. COLLINS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 10 DAY
OF September MAY, 1966.

NOTARY PUBLIC

RECEIVED

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED [illegible]
A. DALLAS O'BRIEN, JR.
CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

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| ROBERT HICKS, ET ALS. | CIVIL ACTION |
| vs. | NO. 15727 |
| CLAXTON KNIGHT, ET ALS. | DIVISION "B" |

___ FEE
___ PROCESS
X CHARGE
___ INDEX
___ ORDER
___ HEARING
DOCUMENT NO. ___

## PRELIMINARY INJUNCTION

This cause coming on to be heard on the motion of the Plaintiffs for a preliminary injunction, and the Court having considered the testimony offered in support of and in opposition to said motion, and having heard the arguments of counsel and being fully advised in the premises and for the reasons orally assigned, and pursuant thereto;

IT IS ORDERED, ADJUDGED AND DECREED that the defendants Arnold D. Spiers, Commissioner of Public Safety, City of Bogalusa, La., Claxton Knight, Chief of Police, City of Bogalusa, La., their agents, employees and successors, Haynes Wascom, police officer, Bogalusa, La., Virtree Adams, deputy sheriff of Washington Parish, Louisiana, and all other agents, representatives and employees of Dorman A. Crowe, sheriff of Washington Parish, La. and their successors, and all persons in active concert with such defendants be and they are hereby enjoined from subjecting or causing to be subjected, under color of any statute, ordinance, regulation, custom or usage any of the plaintiffs or persons similarly situated to the deprivations of any rights, privileges or immunities secured by the Constitution and laws of the United States by any acts or omissions including but not limited to, the following;

(1) Committing any act of violence or threatening to commit any act of violence or assisting or encouraging others to commit any act of violence or to threaten to commit any act of violence which prevents or discourages the exercise of the right to picket, the right to assemble

peaceably, and the right to advocate equal civil rights for Negroes.

(2) Failing to use all reasonable means to protect plaintiffs and others similarly situated from:

a. Physical assaults and beatings;

b. Harassment and intimidation which prevents or discourages their exercise of the right to picket, assemble peaceably and advocate equal civil rights for Negroes;

(3) Harassing, intimidating, or in a discriminatory manner punishing plaintiffs and those similarly situated, by any of the following acts or practices:

a. Verbal abuse, including cursing, insults or threats;

b. Unlawful and abusive interrogations;

c. Unlawful arrests, threats of arrests, prosecutions, and threats of prosecutions, including arrests and prosecutions of persons who are themselves merely the victims of assaults by others;

d. Permitting prisoners, policemen, sheriffs or any other persons to abuse persons in custody in jail or outside of jail by assaulting or striking them or subjecting them to any threats of violence.

e. Using unnecessary force in handcuffing or otherwise restraining persons taken into custody and handcuffing persons with their hands behind their backs solely as a means of punishment or harassment.

(4) Concealing their identity as law enforcement officials by covering or removing their badges or other indicia of office, or by any other means.

DATE: July 10, 1965
11:15 a.M.

Herbert W. Christenberry
HERBERT W. CHRISTENBERRY
UNITED STATES DISTRICT JUDGE

8-12-65 0-6 HAK:mg

COPY

## UNITED STATES COURT OF APPEALS
## FOR THE FIFTH CIRCUIT

WILLIE ELLIOTT JENKINS, PPA et al.,
Appellants,

vs.

CITY OF BOGALUSA SCHOOL BOARD et al.,
Appellees

NO.

APPELLANTS' MOTION FOR INJUNCTIVE RELIEF PENDING APPEAL

Appellants move this Court for injunctive relief pending appeal to require the desegregation of the public schools of the City of Bogalusa under a school desegregation plan for the year 1965-1966.

As grounds for this motion appellants state the following:

1. Appellants are Negro children and the representatives of Negro children enrolled, or eligible to enroll, in the public schools of the City of Bogalusa.

2. Appellees are the City of Bogalusa School Board, the President of said Board, and the Superintendent of Schools of said City.

3. On July 19, 1965, appellants, on behalf of themselves and in behalf of other Negro students residing in the City of Bogalusa, filed the complaint in this action, under Section 1343(3) of Title 28, United States Code, in the United States District Court for the Eastern District of Louisiana. (A copy of the complaint is affixed hereto.) The complaint alleged that appellees, acting under color of authority of the laws of the State of Louisiana, the ordinances of the City of Bogalusa and the customs and usages of said State and City, are operating a compulsory biracial school system in violation of appellants' rights under Title IV of the Civil Rights Act of 1964 (78 Stat. 241). Appellants sought an injunction against the continued operation of a biracial school system in the City of Bogalusa.

4. The appellees filed an answer on August , 1965 (a copy of the answer is affixed hereto.) In their answer, appellees

admitted all of the factual allegations of the complaint.

5. On August 10, 1965, the Court refused to sign a Temporary Restraining Order and signed an Order to Show Cause returnable on August 12, 1965, at 9:00 a.m.

6. That on August 12, 1965, the matter was heard before the District Court and the injunction prayed for was denied. An order, a copy of which is attached hereto and made a part hereof, was entered.

7. That on August 12, 1965, appellants filed a notice of appeal to this Court.

8. The appellees have flouted the Supreme Court's mandate in Brown v. Board of Education for over eleven years. The appellees not only failed to take any steps to implement the clear mandate of the Court for over a decade, they failed to take any steps to formulate a plan for the desegregation of the Bogalusa School System after the complaint in this action was filed on July 31, 1965. The appellees now contend that because of the pressures of time they are unable to make any start toward the desegregation of the Bogalusa schools commencing this fall.

In Singelton v. Jackson Municipal Separate School District, No. 22527 (June 22, 1965) this Court made it unequivocally clear that:

> "The time has come for foot-dragging public school boards to move with celerity toward desegregation. Since May 17, 1954, public school boards throughout the country have known that they must desegregate their schools."

In implementation of this view, this Court has laid down stringent standards for the minimum requirements that must be made for the 1965-66 school year. Armstrong v. Board of Education of the City of Birmingham (5 Cir. 1964) 333 F.2d 47; Davis v. Board of School Commissioners of Mobile County (5 Cir.) 333 F.2d 53; Stell v. Savannah-Chatham County Board of Education (5 Cir. 1964) 333 F.2d 55; Gaines v. Dougherty County Board of Education (5 Cir. 1964) 334 F.2d 983; Price v. Dennison Board of Education;

No. 21632 (July 2, 1965) and Singelton v. Jackson Municipal Separate School District, No. 22527 (June 22, 1965). Indeed this Court has reversed desegregation plans approved by lower courts on the ground that the plan, while allowing for some desegregation for the 1965 school year, did not provide for enough.

Here the District Court did not provide for inadequate desegregation for 1965-66, it has provided for none. In this extreme circumstance, injunctive relief pending appeal is certainly required. If injunctive relief is not granted, the rights of those Negro students who would be assigned to desegregated classes for 1965-66 under an adequate desegregation plan will be forever lost. For this reason those students will suffer irreparable injury.

9. The action of the District Court denying appellant the benefit afforded by the above cited decisions of this Court, will result in irreparable injury if injunctive relief pending appeal is not granted by this Court as soon as possible in that the school year will begin in the City of Bogalusa on August 30, 1965. Appellants are cognizant of the rulings both in the second Brown case (Brown v. Board of Education, 349 U.S. 294, 1955 and in Cooper v. Aaron, 358 U.S. 1, 1958) that some delay in the desegregation of a particular school or system may be countenanced and tolerated where, and only where, there has been a showing of necessity for such delay.

As was set forth by the Supreme Court in Cooper v. Aaron (supra) at page 7:

> "On the other hand, a District Court after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), might conclude that justification existed for not requiring the present nonsegregated admission of all qualified Negro children. In such circumstances, however, the courts should scrutinize the program of the school authorities to make sure that they had developed arrangements pointed toward the earliest practicable completion of desegregation, and had taken appropriate steps to put their program into effective operation. It was made plain that delay in any guise in order to deny the constitutional rights of Negro children could not be countenanced, and that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools could constitute good faith compliance. State authorities

> were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." (emphasis added)

The second Brown case (Brown v. Board of Education, (supra) at page 300) lays the foundation for any such delay, wherein the Court said:

> "The courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner." (emphasis added)

In the instant case, however, in asking for a delay, the appellees merely seek to continue the operation of a biracial school system in violation of the equal protection clause of the Fourteenth Amendment without ever having evidenced any good faith step toward compliance. Even if it is assumed that for eleven years the Board had no obligation, and that the matter was not formally before the District Court until August 12, 1965, service of the petition was perfected on July 21 and 22, 1965 and certainly the appellees were on notice of what should have been done at least as of that date. The appellees, however, again saw fit not to attempt to formulate and implement any plan for desegregation of the public schools after service was made. Rather the Board and the Superintendent did nothing and when finally brought to a hearing on the matter sought to have the District Court provide them with shelter by a showing that the administrative problems involved prevented them from going forward. This meets neither the requirements for a stay as laid down in the second Brown case (supra) or in the Cooper case (supra). The position of the appellees is even further weakened and inconsistant with the decisions of this Court as when in the Singelton case (supra) the Court said that:

> "A slow-down now will only multiply a school board's administrative difficulties"

and also that

> "If judicial standards are lower, recalcitrant school boards in effect will receive a premium for recalcitrance; the more intransigence, the bigger the bonus." (emphasis added)

Is this not then the essence of appellees' case: We have delayed so long that we should now be allowed to delay even longer.

Appellants respectfully submit that appellees' argument is untentable and that under no interpretation of the cases can their position be considered to meet the good faith requirement. Appellants further submit that having shown no good faith, the appellees were not entitled to any further delay in the formulation and implementation of a plan to desegregate and that the District Court abused its discretion and committed reversable error by refusing to make any order with regard to the 1965-66 school year.

10. The relief requested by appellants - an injunction requiring desegregation pending appeal from an order of the District Court denying such relief - has been recognized by this Court as proper and granted on numerous occasions where to do otherwise would result in irreparable damage; Stell v. Savannah-Chatham County Board of Education, 318 F.2d 425 (1963); Harris v. Gibson, 322 F. 2d 780 (1963); Davis v. Board of School Commissioners of Mobile County, 322 F.2d 356 (1963). This Court, in the above referred to cases, cites and upholds the statutory authority for this action as 28 U.S.C.A., Sec. 1651. In Davis, (supra) the Court granted the relief in an instance most similar to the one at bar. The appellees had alleged and the District Court found, that because of the time factor the administrative burden placed on the school system would be too great to implement any plan for desegregation. The Court in that case stated:

> "The administrative problem is not one created by the plaintiffs. They have for nearly a year sought without success to get the school authorities to desegregate the schools." (emphasis added)

and

> "At this late date the plaintiffs, who represent Negro children who are presently being denied constitutional rights, are entitled to minimum effective relief. . . it means that effective relief is denied for another school year with no assurance that even at such later

date anything but a reaffirmation of the teaching of the Brown decision will be forthcoming." (emphasis added)

Absent the showing of an attempt in good faith to formulate and implement a plan as required, it is submitted that the only reasonable conclusion to be drawn from the appellees inactivity is that they are solely interested in forestalling the implementation of the rights of Negro American citizens in the City of Bogalusa and to continue to ignore the Supreme Court's mandate in Brown. It is respectfully submitted that the school board's scheme should not be allowed to further frustrate the spirit and the letter of the law.

11. In refusing to order the desegregation of any grades for 1965-66 school year, the District Court gave great weight to the fact that, on the day of its decision, only eighteen days remained before the opening of schools in the City of Bogalusa. It is of course a matter of common knowledge that Negro citizens of Bogalusa have been openly seeking to break the shackles of segregation since February 1965. Included in their demands has always been a desegregation of the city's schools, and certainly the Board, its President and the Superintendent must be considered to have been aware of the situation. In spite of the dramatization of this situation since February, the appellees have not seen fit to do anything to ameliorate the overall racial problems, or grant the appellants their unquestioned right to desegregated public school education. In this light, the indulgence of the District Court attitude manifest by the appellees cannot be allowed to stand. Not only is the action of the lower court in delaying desegregation for another year in contravention of the mandate of the Supreme Court and this Court, it is without basis in fact. Although admittedly there were only eighteen days before school was to open it must be realized that there are only _________ children in the entire school system and only __________ number of schools. To urge that administrative problems prevent the desegregation of any of

the grades by the opening of school does not appear credulous when viewed in the light of the scope of the problem involved as it applies to the City of Bogalusa and the events of the last six and one half months. It is therefore further submitted by appellants, that in this instance it would not only be proper for the Court to make an order requiring the desegregation of the schools; but further, that in the interests of preserving the constitutional rights of those Negro children involved and to allow the appellees further time to implement any plan for desegregation, the Court should order that the opening day of all schools be postponed until such time as the plan may be effectuated. In this way administrative mechanics will not be given higher priority than constitutional rights.

WHEREFORE, appellants pray that this Court grant their motion for injunctive relief pending appeal requiring the desegregation of all grades of the public schools of the City of Bogalusa on or before August 30, 1965, or for such other and further relief as this Honorable Court deems just, equitable and proper. Appellants further pray that this Honorable Court act on this motion in sufficient time to allow the implementation of the Court's injunction by the opening of school at the end of August, 1965.

Respectfully submitted,

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Lousiana 70113

By ______________________________

Of counsel:

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HASKELL A. KASSLER, ESQ.
One State Street
Boston, Massachusetts

SEDFRE HICKS and RAYFORD VS. HUGHES NEW ORLEANS, LOUISIANA 1965-1966
(BOGALUSA, LOUISIANA HOUSING AUTHORITY)

orical Society of Wisconsin

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U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED
JUL [illegible] 1965
A. DALLAM O'BRIEN, JR.
CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ROBERT HICKS, ET ALS.

vs.

CLAXTON KNIGHT, ET ALS.

CIVIL ACTION
NO. 15727
DIVISION "B"

___ FEE
___ PROCESS
X CHARGE
___ INDEX
___ ORDER
___ HEARING
DOCUMENT NO. ___

## PRELIMINARY INJUNCTION

This cause coming on to be heard on the motion of the Plaintiffs for a preliminary injunction, and the Court having considered the testimony offered in support of and in opposition to said motion, and having heard the arguments of counsel and being fully advised in the premises and for the reasons orally assigned, and pursuant thereto;

IT IS ORDERED, ADJUDGED AND DECREED that the defendants Arnold D. Spiers, Commissioner of Public Safety, City of Bogalusa, La., Claxton Knight, Chief of Police, City of Bogalusa, La., their agents, employees and successors, Haynes Wascom, police officer, Bogalusa, La., Virtree Adams, deputy sheriff of Washington Parish, Louisiana, and all other agents, representatives and employees of Dorman A. Crowe, sheriff of Washington Parish, La. and their successors, and all persons in active concert with such defendants be and they are hereby enjoined from subjecting or causing to be subjected, under color of any statute, ordinance, regulation, custom or usage any of the plaintiffs or persons similarly situated to the deprivations of any rights, privileges or immunities secured by the Constitution and laws of the United States by any acts or omissions including but not limited to, the following;

(1) Committing any act of violence or threatening to commit any act of violence or assisting or encouraging others to commit any act of violence or to threaten to commit any act of violence which prevents or discourages the exercise of the right to picket, the right to assemble

peaceably, and the right to advocate equal civil rights for Negroes.

(2) Failing to use all reasonable means to protect plaintiffs and others similarly situated from:

- a. Physical assaults and beatings;
- b. Harassment and intimidation which prevents or discourages their exercise of the right to picket, assemble peaceably and advocate equal civil rights for Negroes;

(3) Harassing, intimidating, or in a discriminatory manner punishing plaintiffs and those similarly situated, by any of the following acts or practices:

- a. Verbal abuse, including cursing, insults or threats;
- b. Unlawful and abusive interrogations;
- c. Unlawful arrests, threats of arrests, prosecutions, and threats of prosecutions, including arrests and prosecutions of persons who are themselves merely the victims of assaults by others;
- d. Permitting prisoners, policemen, sheriffs or any other persons to abuse persons in custody in jail or outside of jail by assaulting or striking them or subjecting them to any threats of violence.
- e. Using unnecessary force in handcuffing or otherwise restraining persons taken into custody and handcuffing persons with their hands behind their backs solely as a means of punishment or harassment.

(4) Concealing their identity as law enforcement officials by covering or removing their badges or other indicia of office, or by any other means.

DATE: July 10, 1965
11:15 a.M.

Herbert W. Christenberry
HERBERT W. CHRISTENBERRY
UNITED STATES DISTRICT JUDGE

CLERK'S OFFICE:
A TRUE COPY

District Court
Louisiana

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

| | |
|---|---|
| ROBERT HICKS and<br>LEON RAYFORD,<br><br>Plaintiffs,<br><br>v.<br><br>CHARLES M. HUGHES, in his capacity as Chairman of the Board of Commissioners of the Housing Authority of the City of Bogalusa, and THE HOUSING AUTHORITY OF THE CITY OF BOGALUSA,<br><br>Defendants. | CIVIL ACTION<br><br>NO. 68-987<br><br>SECTION "E" |

## COMPLAINT

1. This action is instituted pursuant to 42 U.S.C. § 1983 to enjoin violations of the rights of the plaintiffs under the Fourteenth Amendment to the United States Constitution. A declaratory judgment is sought, pursuant to 28 U.S.C. § 2201, as well as injunctive relief against the continuation of unlawful practices. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(3).

2. Plaintiffs Robert Hicks and Leon E. Rayford are Negro citizens of the United States. Plaintiff Hicks resides at 924 East Ninth Street, Bogalusa, Louisiana. Plaintiff Rayford resides at 841 Saba Street, Bogalusa, Louisiana. Plaintiff Rayford rents housing at this address and would want to rent an apartment in projected public housing units in Bogalusa, Louisiana, if such units were located in accordance with applicable requirements of federal law. Plaintiffs sue in their own behalf and in behalf of all other Negro residents of Bogalusa, Louisiana. The class is so numerous that joinder of all members is

impracticable. There are questions of law and fact common to the class. The claims of the plaintiffs will fairly and adequately protect the interests of the class. The defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

3. Defendant Housing Authority of the City of Bogalusa, Louisiana (hereinafter the "Bogalusa Housing Authority") is a corporate body created under the laws of the State of Louisiana and charged by the State of Louisiana and the City of Bogalusa with the duty of constructing and administering public housing in the City of Bogalusa, and with receiving and administering such local and federal funds as are made available to it for that purpose. Action of the Bogalusa Housing Authority constitutes action by a state within the meaning of the Fourteenth Amendment to the United States Constitution.

4. Defendant Charles M. Hughes is Chairman of the Board of Commissioners of the Bogalusa Housing Authority. He is sued in that capacity.

5. Since its inception, the Bogalusa Housing Authority has maintained and administered public housing in Bogalusa on a segregated basis and in a manner that discriminates against Negroes on account of race. Specifically, there are no public housing developments in Bogalusa integrated as to race. Developments are located by the Bogalusa Housing Authority in a manner that ensures that they will be segregated as to race. The membership of the five man Bogalusa Housing Authority has always been exclusively white, although the population of the City of Bogalusa is approximately one third Negro.

6. On April 22, 1968, the Bogalusa Housing Authority signed a contract for the construction of ninety-eight new low rent public housing units in the City of Bogalusa. These ninety-eight units are planned to be located on nineteen different sites in the City of Bogalusa. Each of these sites is located in all-Negro or virtually all-Negro residential neighborhoods in Bogalusa. Financial assistance for the construction of these units has been approved by the Housing Assistance

Administration of the United States Department of Housing and Urban Development. The projects are thus subject to the requirements of § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, relating to non-discrimination in federally assisted programs.

7. Because of the locations of the proposed units, as described in paragraph 6 hereof, white persons in Bogalusa, Louisiana will not apply to reside therein and each will be occupied solely by Negro tenants. The proposed locations of the new units will thus operate to maintain and reinforce the existing pattern of residential segregation by race in Bogalusa.

8. The defendants located the proposed ninety-eight units in all-Negro neighborhoods for the purpose of perpetuating residential segregation by race in Bogalusa.

9. The construction of the proposed ninety-eight units in the circumstances described herein is violative of the rights of the plaintiffs under § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

10. Construction of the proposed ninety-eight units is scheduled to begin in the immediate future. There is a real and actual controversy between the parties. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

1. transfer this matter to the Section of this Court to which Hicks v. Weaver, Civil Action No. ________, filed May 14, 1968, was allotted;

2. issue a temporary restraining order and a preliminary injunction requiring the defendants to postpone the beginning of construction on the ninety-eight proposed units, pending a decision of this case on the merits;

3. issue a declaratory judgment that the location of federally assisted public low rent housing in racially segregated neighborhoods, where other locations for the construction of such housing are available, violates § 601 of

the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and due process of law and equal protection of law, secured by the Fourteenth Amendment to the United States Constitution;

4. issue a permanent injunction against the construction of the proposed ninety-eight units or any units of public housing unless or until;

(a) the proposed units or any future units are relocated outside neighborhoods in which only Negroes reside; or

(b) thirty days after the defendant files with this Court and serves upon opposing counsel a written finding, reciting the evidence in support thereof, that location of public housing units in accordance with the requirements of sub-paragraph (a) of this paragraph is not possible;

5. award plaintiffs the costs of this action and such other and further relief as may be just and proper.

Respectfully submitted,

RICHARD B. SOBOL
ROBERT P. ROBERTS
606 Common Street
New Orleans, Louisiana 70130
523-1797

COLLINS, DOUGLAS & ELIE
344 Camp Street
New Orleans, Louisiana
523-5197

By: Richard B. Sobol
Attorneys for Plaintiffs

Dated: May 15, 1968

## INSTRUCTIONS FOR SERVICE

Serve defendant Charles M. Hughes at his law office, 322 Columbia Road, Bogalusa, Louisiana.

Serve defendant Housing Authority of the City of Bogalusa by serving its Chairman, Charles M. Hughes.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

| | |
|---|---|
| ROBERT HICKS and<br>LEON E. RAYFORD,<br>Plaintiffs,<br>v.<br>CHARLES M. HUGHES, in his capacity as Chairman of the Board of Commissioners of the Housing Authority of the City of Bogalusa, and THE HOUSING AUTHORITY OF THE CITY OF BOGALUSA,<br>Defendants. | CIVIL ACTION<br>NO. 68-987<br>SECTION E |

## MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

This is an action against the Chairman of the Housing Authority of the City of Bogalusa, and against the Housing Authority itself to declare unlawful and to enjoin the construction of ninety-eight public housing units in segregated neighborhoods in Bogalusa, Louisiana. The action is instituted to redress the rights of the plaintiffs and the class they represent under § 601 of the Civil Rights Act of 1964 and under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

The companion action by the same plaintiffs against the Secretary of the United States Department of Housing and Urban Development (Hicks v. Weaver) is brought to declare unlawful and enjoin the payment of federal funds to aid in the construction of the same public housing units. The action is instituted to redress the rights of the plaintiffs, two Negro citizens of Bogalusa, and the class they represent under § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and under the due process clause of the Fifth Amendment to the United States Constitution.

A preliminary injunction is sought in both actions.

## STATEMENT OF THE CASE

Based on the allegations of the complaints in the two actions, and the supporting affidavit of plaintiff Robert Hicks, the relevant facts in this matter are as follows:

The Housing Authority of the City of Bogalusa, Louisiana (hereinafter the "Bogalusa Housing Authority") is a corporation organized under the laws of the State of Louisiana. It is charged under state law with the duty of constructing and administering public housing in the City of Bogalusa, and with receiving and administering such local and federal funds as are made available to it for these purposes. La. Rev. Stat. 40:381 et seq.

With minor exceptions, residential neighborhoods in Bogalusa are segregated as to race. Since its inception nearly twenty years ago, the Bogalusa Housing Authority has constructed a substantial number of public housing units on several different sites in the City of Bogalusa. Those of the units that are located on sites in all-white residential neighborhoods are occupied solely by white tenants. Those of the units that are located on sites in all-Negro neighborhoods are occupied solely by Negro tenants. There is not a single public housing site in Bogalusa in which both whites and Negroes reside.

Under Louisiana law, the five members of the Bogalusa Housing Authority are appointed by the Mayor of Bogalusa. La. Rev. Stat. 40:401. Although the population of the City of Bogalusa is approximately one-third Negro, there is not now and there never has been a Negro member of the Bogalusa Housing Authority.

For the past several years, the Bogalusa Housing Authority has comtemplated the construction of ninety-eight additional units of low-rent public housing in the City of Bogalusa, with the assistance of federal funds, made available under the United States Housing Act of 1937, 42 U.S.C. § 1401, through the Housing Assistance Administration (hereinafter "HAA") of the United States Department of Housing and Urban Development (hereinafter "HUD"). A list of sites were selected by the Bogalusa Housing Authority for the construction of these units, and federal funds for the construction was approved by defendant Weaver, his agents or employees.

Plaintiffs are two Negro residents of the City of Bogalusa. Plaintiff Rayford rents housing in the City of Bogalusa and would want to rent public housing if it were located and constructed in compliance with the requirements of the federal Constitution and § 601 of the Civil Rights Act of 1964. The plaintiffs sue in their own behalf and in behalf of all persons similarly situated, pursuant to Rule 23(a), (b) (2) of the Federal Rules of Civil Procedure.

Subsequent to the approval by HAA, plaintiff Hicks wrote to defendant Weaver requesting that he reconsider the decision to grant federal funds to the proposed construction on the ground, inter alia, that the sites proposed were located within all-Negro residential neighborhoods and would therefore result in the perpetuation of segregated housing in the City of Bogalusa, in violation of the requirements of § 601 of the Civil Rights Act of 1964. After extensive correspondence, a meeting between counsel for plaintiff Hicks and HAA officials in Washington, and an investigation by an official of HAA, the decision to allow federal financing of the proposed ninety-eight units was affirmed. Reconsideration was requested and granted, but the original decision was again adhered to. Apparently the basis for the HAA decision was the purported failure of plaintiff Hicks to propose more acceptable sites. The matter lay dormant until April 22, 1968, when federal financing in an increased amount was made available to meet a low bid in excess of the amount originally estimated and a contract for the construction of the units was signed. Construction has not as yet begun.

Of the nineteen sites on which it is now planned to build the projected ninety-eight units, seventeen sites, on which ninety of the units will be built, are in totally Negro neighborhoods, i.e., neighborhoods in which no white persons reside. The remaining two sites, on which eight units will be built, are located in neighborhoods that are predominantly, but not exclusively, Negro.

It is fair to assume that if the projected units are built as now planned, white persons in Bogalusa, Louisiana will not apply to reside in these units, and the result will be all-black public housing sites in the midst of all-black neighborhoods. It is plaintiffs' submission in these proceedings that this result plainly violates § 601 of the 1964 Civil Rights Act and the due process and equal protection requirements of the United States Constitution.

## ARGUMENT

### I. PLAINTIFFS ARE ENTITLED TO MAINTAIN THESE ACTIONS TO ENJOIN VIOLATIONS OF THEIR RIGHTS UNDER SECTION 601 OF THE CIVIL RIGHTS ACT OF 1964 AND UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

In these actions, plaintiffs seek to enjoin alleged violations of their rights under the Fifth and Fourteenth Amendments to the United States Constitution and under § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

It is, of course, well established that the plaintiffs are entitled to maintain an action in this Court to redress and enjoin violations of their rights secured against federal action by the Fifth Amendment (Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009; 28 U.S.C. § 1346(a)(2); 1361; Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952); Bolling v. Sharpe, 347 U.S. 497 (1954)); or secured against state action by the Fourteenth Amendment (42 U.S.C. § 1983; Zwickler v. Koota, 389 U.S. 241 (1967)).

Moreover, it has been decided by the United States Court of Appeals for this Circuit that a private party may bring an action in the federal district courts to enjoin violations of the right to non-discrimination in federally assisted programs secured to him by § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.*

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* Section 601 provides that:

> No person in the Unites States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

In the leading case of Bossier Parish School Board v. Lemon, 370 F. 2d 847 (5th Cir. 1967), the Court of Appeals unanimously held that a private person within the class protected by § 601 may assert rights thereunder in a proceeding in federal court. In the Bossier Parish case, the defendant argued that the administrative procedure set forth in § 602 for enforcement of § 601 by the Government constituted the exclusive procedure for the enforcement of § 601. The Court rejected this argument:

> The defendants argue that this section /Section 601/ is a mere statement of policy, and that Section 602's administrative remedies are the only means by which it may be enforced. Section 601 states a reasonable condition that the United States may attach to any grant of financial assistance and may enforce by refusal or withdrawal of federal assistance. But it also states the law as laid down in hundreds of decisions, independent of the statute. In this sense the section is a prohibition and not an admonition. In the absence of a procedure through which individuals protected by Section 601's prohibition may assert their rights under it, violations of the law are cognizable by the courts. . . . The Negro school children, as beneficiaries of the Act, have standing to assert their Section 601 rights.

370 F. 2d at 852. See also Gautreaux v. Chicago Housing Authority, 265 F. Supp. 582, 583-84 (N.D. Ill. 1967), following the Bossier Parish decision, and permitting Negro plaintiffs to assert rights under § 601.

## II. FEDERAL FINANCIAL ASSISTANCE FOR THE CONSTRUCTION OF PUBLIC HOUSING IN SEGREGATED ALL-NEGRO RESIDENTIAL NEIGHBORHOODS VIOLATES THE RIGHTS OF PROSPECTIVE NEGRO TENANTS UNDER SECTION 601 OF THE CIVIL RIGHTS ACT OF 1964 AND UNDER THE CONSTITUTION OF THE UNITED STATES

The ultimate legal question in this proceeding is whether federal financial assistance for the construction of public housing in segregated all-Negro neighborhoods violates § 601 of the Civil Rights Act of 1964. At this preliminary injunction phase, it is only necessary, under well established principles, to establish only that there is a "probability" that plaintiffs will succeed on the merits. In these cases, this probability is convincingly established by the regulations and directives issued by the Department of Housing and Urban Development.

The HUD Regulations for "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development— Effectuation of Title VI of the Civil Rights Act of 1964," provide, in part, that a "recipient, in determining the location or types of housing... which will be provided under any program or activity...may not...utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color or national origin..." 24-A C.F.R. § 1.4(2)(i). More specifically, the "Low Rent Housing Manual" issued by HUD for the guidance of local authorities seeking federal assistance for the construction of housing, provides that the local housing authority has a responsibility to choose from among otherwise acceptable sites those that will offer members of minority groups an opportunity to live outside areas of minority group concentration.

> "Any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable . . ."

HUD, Low Rent Housing Manual, 205.1, ¶ 4(g).

It is plain therefore that by financing the projected ninety-eight units in Bogalusa, HUD is in violation of its own interpretation of the requirements of Title VI of the Civil Rights Act. We submit that this in itself is sufficient to indicate a probability that plaintiffs will succeed on the merits. Compare Service v. Dulles, 354 U.S. 363 (1967); United States v. Shaughnessy, 347 U.S. 260 (1954).

Moreover, in the related area of discrimination in education, it is now established that construction of new schools, where possible, outside areas of racial concentration is required both by constitutional concepts of due process and equal protection of law (United States v. Jefferson County School Board, 372 F. 2d 836, 900 (5th Cir. 1966), 380 F. 2d 385, 394 (5th Cir. 1967) (en banc), cert. denied, 389 U.S. 840 (1967)), and by § 601 of the Civil Rights Act of 1964, (Department of Health, Education and Welfare, Policies on Elementary and Secondary School Compliance With Title VI of the Civil Rights Act of 1964 §13 (March, 1968)). In United States v. Board of Instruction of Polk County, No. 25768, decided April 18, 1968, the Court of Appeals for the Fifth Circuit enjoined pending appeal the construction of a new school in a predominantly Negro neighborhood.

## III. PLAINTIFFS AND THE CLASS THEY REPRESENT WILL SUFFER IRREPARABLE INJURY IF PRELIMINARY INJUNCTIVE RELIEF IS NOT GRANTED

The contract for the construction of the proposed ninety-eight units of public housing has been signed, and the land has been acquired. Construction may therefore begin at any time. Actual construction would amount to irreparable injury, for, as the Court of Appeals for the Eighth Circuit noted in Kelley v. Altheimer School District, 378 F. 2d 483, 497 (1967), it is impossible to undo the effects of impermissible construction of this kind. Moreover, because the matter would be effectively mooted by the construction of the units, the failure to grant plaintiffs relief at this stage, before the beginning of construction, would constitute a decision on the merits.

As noted above, in United States v. Board of Public Instruction of Polk County, No. 25768, decided April 18, 1968, the Court of Appeals recognized the validity of the principles set forth herein and enjoined pending appeal the construction of a new public school in a predominantly Negro neighborhood. Similarly, in these matters, plaintiffs now ask only that the status quo be preserved so that the Court will be in a position to render effective relief in the likely event that the plaintiffs prevail in the merits.

## CONCLUSION

The Report of the National Advisory Commission on Civil Disorders concludes with the following admonition:

> To date, housing programs serving low-income groups have been concentrated in the ghettos. Nonghetto areas, particularly suburbs, for the most part have steadfastly opposed low-income, rent supplement, or below-market interest rate housing and have successfully restricted use of these programs outside the ghetto.
>
> We believe that federally aided low and moderate income housing programs must be reoriented so that the major thrust is in nonghetto areas. Public housing programs should emphasize scattered site construction, rent supplements should wherever possible, be used in

> nonghetto areas, and an intensive effort should be made to recruit below-market interest rate sponsors willing to build outside the ghettos.
>
> The reorientation of these programs is particularly critical in light of our recommendation that 6 million low and middle income housing units be made available over the next five years. If the effort is not to be counterproductive, its main thrust must be in nonghetto areas, particularly those outside the central city.

P. 482, Bantam Books Edition.

We think it clear that at this stage of our history the Government of the United States should not finance the reinforcement of segregated housing, through the construction of public housing in ghetto neighborhoods. While the solutions to the problems of residential segregation, North and South, and the attendant problem of racial isolation in public schools, are far from clear, it is plain that the existing crisis should not be compounded in the manner proposed by the defendants in these cases.

Plaintiffs respectfully pray that the preliminary injunction against the construction of segregated housing be issued.

Respectfully submitted,

RICHARD B. SOBOL
ROBERT P. ROBERTS
606 Common Street
New Orleans, Louisiana 70130
523-1797

COLLINS, DOUGLAS & ELIE
344 Camp Street
New Orleans, Louisiana 70130
523-5197

By: Richard B. Sobol
Attorneys for Plaintiffs

Dated: May 15, 1968

Bogalusa

## IN THE UNITED STATES DISTRICT COURT
## FOR THE EASTERN DISTRICT OF LOUISIANA
## NEW ORLEANS DIVISION

MR. ROBERT HICKS and
MR. A. Z. YOUNG, on their own
behalf and on behalf of all others
similarly situated,

PLAINTIFFS

vs.

CIVIL ACTION
NO. 15672

JESSE H. CUTRER, individually, as
Mayor, and as a Member of the
Commission Council of Bogalusa, Louisiana,
ARNOLD SPIERS, individually, as Commissioner
of Safety, and as a Member of the Commission
Council of Bogalusa, Louisiana, MARSHALL
HOLLOWAY, JAMES K. TALBOT, ANDY OVERTON,
individually and as Members of the Commission
Council of Bogalusa, Louisiana, CLAXTON
KNIGHT, individually and as Chief of Police
of Bogalusa, Louisiana,

DEFENDANTS.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

## MOTION TO DISMISS

The plaintiffs move the court as follows:

1.) To dismiss this action in accordance with Rule 41 (a) of the Rules of Civil Procedure on the ground that since the filing of this suit the Ordinance of the City of Bogalusa, Louisiana sought to be enjoined on the basis of unconstitutionality has been amended by the City Council of Bogalusa so as to substantially remove the objections raised by complainants.

2.) The defendants have not filed an answer or motion for summary judgment in this matter.

WHEREFORE, plaintiffs hereby pray that this action be dismissed without prejudice.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: ______________________

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

ALVIN J. BRONSTEIN
603 N. FARISH STREET
JACKSON, MISSISSIPPI

## CERTIFICATE

I, ROBERT F. COLLINS, of counsel for plaintiffs in the above matter hereby certify that I sent a copy of the above motion to opposing counsel by depositing the same in the U. S. Mail, postage prepaid, as follows: Jack R. Martzell, Esq., 328 Chartres Street, N.O., La.

______________________
ROBERT F. COLLINS

WHEREFORE, it is hereby ordered that this action be dismissed without prejudice.

JUDGE

NEW ORLEANS, LOUISIANA, JUNE , 1965.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ROBERT HICKS, ET ALS.
vs. CIVIL ACTION
CLAXTON KNIGHT, ET ALS. NO.

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## TEMPORARY RESTRAINING ORDER

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA;

Whereas in the above named cause it has been made to appear by the verified complaint filed herein on the day of 1965, presented to the Honorable , Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue without notice, because immediate and irreparable injury, loss and damage will result to the plaintiffs before notice can be served and a hearing had thereon; and

Whereas the unlawful acts of defendants, their agents, employees, representatives and other persons in active concert with them, under color of statute, ordinance, regulation, custom or usage of the State of Louisiana have subjected, or caused to be subjected, plaintiffs and others similarly situated to the deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States;

Whereas notice and hearing before entering a temporary restraining order should not be required because plaintiffs have no adequate remedy at law;

NOW, therefore, on motion of Plaintiffs:

IT IS ORDERED that defendants, their agents, representatives, employees, successors, and all persons in active concert with them be and the same are enjoined from:

(1) Committing any act of violence or threaten violence, against plaintiffs or any person for the pupose of preventing or discouraging such person from picketing, assembling, using the public parks in Bogalusa, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or assisting or encouraging others to do the same;

(2) Failing to protect plaintiffs and others similarly situated from:

a) Physical assaults and beatings;

b) Harassment and intimidation, at the hands of white citizens for the purpose of discouraging plaintiffs and others similarly situated from picketing, using the public parks in Bogalusa, assembling, or exercising other fundamental personal civil rights, or encouraging others to do the same.

(3) Molesting, interfering with, interrogating, discriminatorily, searching and arresting, threatening to arrest plaintiffs or any person for the purpose of preventing or discouraging such person from picketing, assembling, using the public parks in Bogalusa, exercising other fundamental personal rights, or advocating equal civil rights for Negroes, or from encouraging and assisting others to do the same.

(4) From harassing, intimidating or punishing plaintiffs, and those similarly situated, or any persons by any of the following acts or practices in pursuance of a deliberate policy of racial discrimination under color of authority;

(a) Discriminatory and unlawful searches of their persons, automobiles, dwelling, or offices;

(b) Subjecting them to verbal abuse, including cursing, insults, name-calling, and threats;

(c) Subjecting them to coercive and abusive interrogations;

(d) Subjecting them on account of race to arrests and prosecutions for purposes of harassment and interfering with the exercise of their federally protected rights.

(e) Permitting prisoners, policemen, sheriffs or any other persons to physically abuse persons in custody or in jail by assaulting or striking them or subjecting them to any or threats of violence.

(5) From combining or conspiring among themselves or with other persons to engage in any of the conduct specified in the immediate preceding four sub-paragraphs, or counseling or advising other persons to do any of the acts mentioned therein or to intimidate, threaten, or coerce any persons by the application of economic penalties or otherwise.

(6) From enforcing a policy of racial discrimination or segregation in the jail and courtroom facilities in the City of Bogalusa.

(7) From preventing spectators to attend public hearings in the Bogalusa Courtroom.

(8) From denying Negro citizens the use and enjoyment of the Bogalusa City Public Parks.

DATED:

UNITED STATES DISTRICT JUDGE

267-f016

# HOUSING AND HOME FINANCE AGENCY

PUBLIC HOUSING ADMINISTRATION

Washington, D. C. 20413

AUG 27 1965

**NEWS**

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DU 2-4236
DU 2-4271
HHFA-PHA No. 65-392

FOR IMMEDIATE RELEASE
August 10, 1965

The Public Housing Administration announced today a Federal loan for construction of 100 low-rent homes, 50 of which are to be designed for the elderly, at Bogalusa, Louisiana.

Average construction cost for the new homes is estimated at $8,297 each, including equipment.

Construction is to be undertaken by the Housing Authority of the City of Bogalusa which awards all contracts on the development.

The loan, totaling $1,089,813 including interest, will be repaid by the Local Housing Authority from the proceeds of the sale of its long-term bonds to private investors.

In addition to construction and equipment funds, the loan will provide funds for site acquisition and improvement, utilities, planning and design fees, space for Local Authority management and maintenance and tenant activities, interest on loan, and administrative costs.

The contract between PHA and the Housing Authority of the City of Bogalusa provides also for annual contributions by the Federal Government to help keep rents within the means of low-income families.

The 100-unit low-rent project is part of a long range program developed by the City of Bogalusa to eliminate slums and blight. This "workable program" is a prerequisite to Federal assistance for public housing. Bogalusa is also eligible for other types of Federal Urban Renewal assistance in carrying out its civic improvement program.

# # # # #

FOR FURTHER DETAILS: Marshall A. Stewart, Executive Director
The Housing Authority of the City of Bogalusa
P. O. Box 1113
Bogalusa, Louisiana 70427

LA-24-7

August 27, 1965

Dr. Robert C. Weaver
Administrator
Public Housing Administration
Washington, D. C.

Dear Dr. Weaver:

As General Counsel of CORE, an organization having a publicly expressed interest in Bogalusa, may I inquire what steps you are taking to make certain that the $1,089,813.00 being loaned to Bogalusa for housing construction will not be used to perpetuate the segregated housing patterns currently existing there?

You are in a position to assist affirmatively in breaking down segregation. May we hear from you shortly?

Very truly yours,

CARL RACHLIN
General Counsel

cc: Hon. Hubert H. Humphrey
Richard Haley
David Dennis
Collins, Douglas & Elie, Esqs.
Alvin Bronstein, Esq.

SEP 13 1965

HOUSING AND HOME FINANCE AGENCY
OFFICE OF THE ADMINISTRATOR • WASHINGTON, D.C. 20410

**Federal Housing Administration**
**Public Housing Administration**
**Federal National Mortgage Association**
**Community Facilities Administration**
**Urban Renewal Administration**

SEP 10 1965

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Mr. Rachlin:

Thank you for your letter of August 27 regarding a housing project in Bogalusa.

I have requested a review of this matter and I will write you further as soon as this has been accomplished.

Sincerely yours,

Robert C. Weaver

Robert C. Weaver
Administrator

A. Z. YOUNG, PRESIDENT
MRS. M. JENKINS, SECRETARY

ROBERT HICKS, VICE PRESIDENT

ROBERT YOUNG, TREASURER
CHARLES SIMS, FINANCIAL SECRETARY

**Bogalusa Voters League**

924 EAST NINTH STREET PHONE 732-7449

BOGALUSA, LOUISIANA 70427

Bog. Hous authority

OCT 8 1965

October 5, 1965

Dear Mr. Rachlin,

Due to the information we received from you we had a meeting with Charles Hughes and Marshall Stewart of the Housing Authority of Bogalusa. We are enclosing the information we found out.

We would like for you to contact us at once so we can get your opinion on how you think we can best use this information. The reason we need your advice at once is because the Mayor is due to appoint a Commissioner on the 20th of this month and we would like to get one of our people appointed as a Commissioner on the Planning Committee.

Thank you very much for all your help.

Sincerely yours,

Mr. and Mrs. Robert Hicks
Mr. + Mrs. Robert Hicks

Encl.
VH/al

Mr. Carl Rachlin
38 ParkRow
New York 38, New York

[Inclosed, Hicks to Rachlin, 1965, Oct. 5]

# REPORT ON MEETING WITH THE HOUSING AUTHORITY OF THE CITY OF BOGALUSA

PRESENT FOR THE CITY:

Mr. Marshall Stewart, Executive Director
Mr. Charles Hughes, Chairman, Planning Committee

PRESENT FOR THE BOGALUSA VOTER'S LEAGUE:

Mr. Robert Hicks
Mr. R. T. Young
Mr. Joe Sartin
Mrs. Robert Hicks
Mrs. Mary Williams

DATE:
October 4, 1965 3:00 p.m.

INFORMATION SECURED:

Mayor appoints

I. The Planning Committee
   A. Appointed by the Mayor
   B. Consists of five (5) Commissioners
      1. Charles Hughes, Chairman
      2. A. O. Buckingham, Assistant Chairman
      3. R. S. Evans
      4. Devon Varnado
      5. Herman Pierce
   C. Each Commissioner is appointed for a five year term, with one Commissioner's term expiring each year.
   D. This year on October 20th the Mayor is due to appoint a man to the Planning Committee.

II. Rent on existing Projects
   A. The amount of rent is determined by taking 20% of the total family income, with a minimum of $20 rent per month.
   B. The rent includes a portion of the gas, electric, and water.
   C. There is no upper income limit on occupancy.

III. Once a year the Mayor and his Counsil is given a complete report by the Planning Committee.

IV. Location of proposed new low-rent housing
   A. The location has not been disclosed in order to prevent people from buying up the land and putting improvements on the land which would increase the price the city would have to pay for the land.
   B. 58 Units are proposed for the south side of town
   C. 48 Units are proposed for the north side of town

V. Project Managers
   A. When the proposed 100 units are completed there will be two openings forfull time project managers.
   B. These are civil service jobs.

October 8, 1965

Robert C. Weaver,
Administrator
Housing and Home Finance Agency
Washington, D. C. 20410

Dear Mr. Weaver:

RE: Bogalusa Housing
Authority

We have previously written to you about the proposed 100 units, low-rent housing in Bogalusa. We should like to call to your attention the following:

1) that the Mayor of Bogalusa has appointed five commissioners who will have the authority to direct this program, none of whom are Negroes

2) Each commissioner has a five year term.

Representatives of the Bogalusa Voters' League have advised me that unless there is adequate protection from the federal government the 100 units, part of which are to be constructed on the north side of town and part on the south, will surely be segregated.

We are sure that you will take all steps necessary to insure that these are desegregated units, that sites be selected for the units which will encourage desegregation and that there be only one application list, with people being assigned in a mechanical fashion which will insure the possibility of desegregation. Without this, the federal government is participating in a program of continued segregation.

While it is important that housing be built, it is more important that such housing, as is built, be desegregated. Unless we make a start,, we perpetuate

Cont'd...

school segregation. May we respectfully urge that you take all steps necessary to insure the desegregation of the units in Bogalusa.

Thank you for your cooperation.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Messrs. Hicks, Gartner, Wiley

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

OCT 22 1965

October 20, 1965

Marvin
Can we
locate
these ? — a
letters
[illegible]

Carl Rachlin, Esq.
C.O.R.E.
38 Park Row
New York, New York

Dear Carl:

On Monday 18th October 1965 in Bogalusa two cases were continued until November 15. These were the cases of Maxine Britt and Michael Jones, two separate cases. Both has a $300.00 bond on one charge and Jones has a $500.00 bond on three charges. Both of these people are in California. I have attempted by all the means I know to get these people in Bogalusa for trial. The Judge has continuted the cases several times. It would cost less than $800.00 to get these people in Bogalusa by bus. Maxine I understand is working in California and Jones I am told is in school out there.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Richard Haley feels the bonding company may apprehend Jones in California and bring him to Bogalusa. Britt would at worse get off with a fine but Jones I am sure would be found guilty on at least one of the three charges. Jones would probably get some jail time. The only other way for Jones is to reimburse the bonding company for the forfeiture.

Respectfully,

COLLINS, DOUGLAS & ELIE
BY: Nils R Douglas

CC: Mr.Richard Haley
Dr. Wiley
Mr.Marvin Rich
Mr. Bob Hicks

NRD/vmg

Bogalusa

October 29, 1965

Nils R. Douglas, Esq.
Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Mr. Douglas:

In answer to your letter of October 20, 1965 regarding Maxine Britt and Michael Jones, I have been informed that Michael Jones is back in Bogalusa, and Maxine Britt is now living in California.

It has been suggested that you call the Southern Office (Richard Haley) for help in locating these two people further.

Sorry that the information is so sparse, but this is all I could determine from this end.

Sincerely,

Charlaine Shelto
Sec. to Carl Rachlin

/cs

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
**HOUSING AND HOME FINANCE AGENCY**
**OFFICE OF THE ADMINISTRATOR** • **WASHINGTON ~~25~~, D. C.** 20410

**Federal Housing Administration**
**Public Housing Administration**
**Federal National Mortgage Association**
**Community Facilities Administration**
**Urban Renewal Administration**

~~NOV 12 1965~~

NOV 10 1965

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York 10038

Dear Mr. Rachlin:

Further reference is made to your letter of August 27 in which you ask what steps we are taking to make certain that the funds being loaned to Bogalusa for housing construction "will not be used to perpetuate the segregated housing patterns currently existing there."

We assume you refer to low-rent housing Project No. LA-24-7 which was covered by an annual contributions contract between the Public Housing Administration and the Housing Authority of the City of Bogalusa, Louisiana, on August 12, 1965. This contract contains a clause pursuant to Title VI of the Civil Rights Act of 1964 providing in pertinent part as follows:

> "In connection with the development and operation of each Project and for as long as each Project or any portion thereof is used for or in connection with low-rent housing for families of low-income, the Local Authority will comply with all requirements imposed by title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Housing and Home Finance Agency issued thereunder, 24 CFR, Subtitle A, Part 1, section 1.1 et seq.; and the PHA requirements pursuant to said regulations. Failure of the Local Authority to comply with the requirement of this section shall constitute a Substantial Default for all the purposes of this Contract. The Local Authority will, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, * * *."

Further, the Local Authority has filed with the PHA an acceptable statement of assurance as to compliance with Title VI. This action by the Local Authority was a prerequisite to an annual contributions contract for Project No. LA-24-7, and the resolution of the board of commissioners adopting the statement and authorizing its submission to the PHA was adopted at the same meeting at which the board approved the Development Program for Project No. LA-24-7. The statement of assurance includes the following amendment to the Local Authority's admission policies:

> "The Housing Authority of the City of Bogalusa, Louisiana, will accept applications for Low Rent Public Housing in all projects, select tenants for all projects and assign applicants to dwelling units in all projects without regard to race, creed, color or national origin. The Housing Authority of the City of Bogalusa will not discriminate because of race, creed, color or national origin in the sale, leasing, rental or other disposition of housing or related facilities (including land) included in the projects or in the use or occupancy thereof. The Housing Authority of the City of Bogalusa will not, on account of race, color, creed or national origin deny to any family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any project suitable to their needs."

The Local Authority's statement by its terms covers all of its federally aided projects including Project No. LA-24-7, even though the Local Authority, at the time it adopted the statement, was not yet a recipient of Federal aid with respect to that project.

An occupancy audit of this Authority was conducted by a PHA auditor August 23-27, 1965. The auditor discussed the statement of assurance with Local Authority staff members and was advised that they had strict instructions from the board and the Executive Director of the Authority to comply with the provisions of Title VI and that they anticipated no problems in this regard. Based on the auditor's report, we have no reason to believe that the Local Authority will not comply.

On August 27, 1965, the PHA issued a Circular to all Local Authorities further implementing Title VI of the Civil Rights Act of 1964. A copy is enclosed. The Local Authority in Bogalusa, like any other Local Authority, is subject to the provisions of the Circular and also to future audit and review.

We have also your letter of October 8, 1965, in which you referred to the fact that none of the five commissioners of the Housing Authority of the City of Bogalusa, Louisiana, is Negro.

Under the Louisiana Housing Authorities Law, commissioners of the Housing Authority are appointed for five-year terms, as you state. However, the terms of office do not run simultaneously but are so arranged that only one commissioner's term expires each year. Appointments are made by the Mayor of the City.

The Public Housing Commissioner, Mrs. Marie C. McGuire, informs me, based on information received from the Fort Worth Regional Office of the Public Housing Administration, that the matter of appointing a Negro commissioner to the Housing Authority board has already been raised in Bogalusa. Indeed, the Executive Director of the Housing Authority was present on October 4 at a meeting with the committee of the Voters' League and was asked about Negro representation on the Housing Authority board. He gave the committee pertinent information as to the means by which appointments are made and the terms of office of Board members. We were subsequently informed that the Voters' League committee has already approached the Mayor concerning appointment of a Negro. Mrs. McGuire also informs me that the PHA auditor who conducted the occupancy audit of this Housing Authority last August reported favorably on the working relationship between the Housing Authority and the Voters' League, the Community Affairs Committee, and the City Council. We have reason to expect, therefore, that this matter is receiving appropriate attention from the local officials concerned.

A copy of this letter is being sent to Mr. Richard Haley, in connection with our reply to a letter from him.

Sincerely yours,

Robert C. Weaver

Robert C. Weaver
Administrator

Enclosure

November 23, 1965

Dr. Robert C. Weaver,
Administrator
Housing and Home Finance Agency
Department of Housing and Urban Development
Washington, D. C. 20410

Dear Dr. Weaver:

I have your letter of November 10, concerning the Bogalusa low rent housing project No. LA-24-7 covered by the contributions contract between the Public Housing Administration and the Housing Authority of Bogalusa dated August 12, 1965.

We have no doubt that your agency has attempted to require the Bogalusa Housing Authority to agree to comply with the law, the question will be, the implementation of that agreement. Our information is to the contrary and the incidents of serious importance that have taken place in Bogalusa since August 12, we think, are proof of our assertion. In almost every imaginable way, with minor exceptions, Bogalusa is highly segregated. You refer to the fact, on Page 3 that there is a "working relationship between the Housing Authority and the Voters' League..." Our information is that the relations are not good between them and that every indication points to an effort to maintain the segregated housing patterns, despite receiving money from the United States government.

On Page 2 you refer to a report from the Public Housing Authority auditor. We do not know what this report says beyond the auditor having received assurances that the law will be complied with. What gives us concern

Cont'd...

is the statement apparently that "they anticipate no problems in this regard." Since we have had major problems in Bogalusa after that date our concern is even greater than when we wrote to you in October. As you will note, the Bogalusa school situation is very bad and unless your agency takes affirmative steps to makeecertain that the housing patter is in effect, integrated, and not merely on paper, not only will Negroes continue to be segregated but this will have a serious adverse effect on school problems as well.

Leaving a matter of this kind to an all white housing authority in Bogalusa, in our view, is a serious mistake because we will all wake up one morning and find that the housing is segregated despite all the assurances and the good reasons that they will find to support such results and then nothing will be able to be done. It seems to me that in a situation as peculiarly important as Bogalusa is, day to day supervision of the applications and the assignment of houses must be made so as to prevent ab initio the development of segregated housing.

May we recommend that you insist on the day to day supervision and that Negroes be involved in the process of applications so as to make certain apartments are made available on a nondiscriminatory basis.

Sincerely,

CARL RACHLIN
General Counsel

CR/es

Bogalusa – pacify letter to Keppel

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

DEC 3 1965

Mr. Robert Hicks
Vice President
Bogalusa Voters League
1215 Lincoln Street
Bogalusa, Louisiana 70427

Dear Mr. Hicks:

Thank you for your communication lodging a complaint of racial discrimination against the public school system of Bogalusa, Louisiana, and enclosing a list of demands by the parents and students of the Bogalusa Voters League for equal facilities in the schools of the system.

The responsibilities for providing adequate physical plant, facilities, and equipment for education lie with local school officials. The Office of Education does not have authority to require schools to improve facilities or provide equipment at any particular school. But this Department does have the authority to insure that students are not discriminated against in educational activities on the ground of race, color, or national origin.

The Bogalusa school system is subject to the order of a court of the United States directing the desegregation of the school system. The Regulation of the Department of Health, Education, and Welare provides that this is an acceptable method of compliance with the Civil Rights Act of 1964, and is not to be judged on the same basis as voluntary plans. The Regulation provides in effect that where a court of the United States has taken jurisdiction over a particular school system and has issued its order as to the steps to be taken, this Office would not interfere. We are therefore forwarding your complaint to the Department of Justice for consideration.

Sincerely yours,

David S. Seeley
Acting Assistant Commissioner
Equal Educational Opportunities Program

December 13, 1965

Hon. Francis Keppel
Assistant Secretary of the
Department of Health, Education & Welfare
Washington, D. C.

Dear Mr. Keppel:

I enclose a copy of a letter to Mr. Robert Hicks of Bogalusa, Louisiana from Mr. David S. Seeley. We are sorely distressed that you feel that you do not have authority to require schools to achieve reasonably equal facilities and equipment. It appears to us that inferior educational facilities violate your statute since Negroes are thereby treated as inferior and thereforeddenied equal protection of the laws.

The fact that there is extant a civil order directing desegregation is no answer to this problem since (a) children are being denied equal protection if their facilities are inferior and (b) court orders take a long time to implement, even if adequate, and children suffer in the meantime and (c)from past experience Bogalusa has tried many things to frustrate the right to equal educational facilities.

A court order, not implemented, leaving inferior schools in existence is a disgrace and if the remedy lies in your hands, you should exercise it. If your regulations for some reason do not cover these situations then we urgently request amendments to cover (a) unequal facilities between Negro and white schools whether the process of desegregation has begun and (b)desegregation pursuant to a court order which is incomplete, or unsatisfactory, then in such cases federal funds be withheld.

Cont'd......

We think your statute covers this now, and any regulation limiting this merely gives away the intent of Congress and destroys the intent of Congress, the President and the public at large.

We further request you call a hearing on the Bogalusa schools at which we can present proof in support of the charges of Mr. Hicks.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Mr. Robert Hicks

Bogalusa

MC-2
0400
Alpern

December 14, 1965

Dr. Robert Weaver
Administrator
Housing and Home Finance Agency
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Dr. Weaver:

On August 27th, 1965 our General Counsel wrote to you about our concern as to the loan of your agency in excess of one million dollars to the Bogalusa Housing Authority, and requested that you make certain that the sum not be used to perpetuate segregation.

On September 10th you told Mr. Rachlin that you would investigate the matter, and on November 10th you wrote again describing the law applicable in such situations, and indicating that your audit of August 23 - 27th, 1965 indicated that there would be strict compliance with the law.

We advised you on November 23, 1965 that matters were going very poorly in Bogalusa, and that the segregated housing pattern would continue in that fashion. It was our view at that time, as we stated, that despite the audit of your agency, the facts were not as described therein. In order to check on the Housing Authority of Bogalusa, particularly in light of the conduct of the Bogalusa officials, we urged day to day supervision.

It is now our sad duty to advise you that our worst predictions have come true. One Devan Varnado, described as an active member of the Klan in court proceedings, has been reappointed as a member of the Bogalusa Housing Authority by Mayor Cutrer. The opportunity to appoint a Negro in this crucial matter to the Authority was ignored, as are most of the matters of concern to Negroes in Bogalusa.

On behalf of the Congress of Racial Equality, we most strongly urge that you forthwith withhold any funds not distributed to the Bogalusa Housing Authority until there is a complete reexamination of the entire matter, until there is adequate representation by local Negroes in decisions made in regard to the houses built with federal money, and until there is firm evidence that the segregated pattern of housing with the support of federal funds will cease. Segregated housing and its concomitant, segregated schools, are intolerable in a modern nation.

Very truly yours,

JF/rwb

James Farmer
National Director

Mr Rachlin

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

Bogalusa

DEC 29 1965

Dear Mr. Farmer:

This is in response to your letter of December 16, 1965 regarding the possible construction of a major high energy physics research facility near Covington, Louisiana.

Last April the Atomic Energy Commission invited proposals for the location of a 200 BEV accelerator. The Commission also contracted with the National Academy of Sciences for an evaluation of the proposals and recommendations to be made to the Atomic Energy Commission for the best sites.

At the present time, the Academy is evaluating eighty-five proposals located in forty-three states. The Louisiana proposal is one of these.

I understand your concern in this matter and can assure you when the number of sites under consideration has been reduced to the final few, the AEC will secure all appropriate commitments from both public and private groups that affirmative and cooperative measures will be taken to eliminate and prevent discrimination in employment, housing, schools, and other community facilities and services.

Sincerely yours,

(Signed) Glenn T. Seaborg

Chairman

Mr. James Farmer, National Director
Congress of Racial Equality
38 Park Row
New York 38, New York

July 1, 1966

Miss Marie C. McGuire
Commissioner,
Public Housing Administration
Department of Housing and Urban
Development
Washington, D. C.

Dear Miss McGuire:

I have a copy of your letter of June 28th to me which encloses a copy of the letter to Mr. Robert Hicks concerning the Bogalusa Housing Authority. I am dreadfully sorry that your letter misses the point completely. While it is true sight selection is one of the ways of insuring desegregation of public housing, it seems to me your obligation does not end when the Bogalusa Voters' League fails to find a sight satisfactory to you.

In one of my letters to your Department, of recent date, I mention the fact that it is your obligation, in our view, of the law, to assure affirmatively that the public housing is thoroughly integrated and that the sights not be used as an excuse to perpetuate segregated housing. What you have done is merely blind your eyes to one fact and have failed to take the affirmative steps necessary. It is no answer to say that you have been given assurances that Title VI will not be infringed. It seems to me, it is your affirmative obligation to find out precisely how Title VI will not be infringed. Otherwise you are spending Federal money in violation of the law and the United States Constitution.

continued

Miss Marie C. McGuire
Commissioner,
Public Housing Administration

I must insist that you advise the Bogalusa Housing Authority and Mr. Hicks that affirmative steps will be taken to insure that there will be absolute desegregation of the housing in Bogalusa.

Sincerely,

CR/tp
cc: Robert Weaver
Robert Hicks
Robert Collins

Carl Rachlin'
General Counsel

**THE REPORTER** THE MAGAZINE OF FACTS AND IDEAS
660 MADISON AVENUE, NEW YORK 21, N. Y.

Monday a.m.

Mr. Rachlin —

Here is the manuscript that Vera asked me to deliver.

Sincerely —

R S Gallagher

Vera Rony
734 Gimghoul Rd.
Chapel Hill, N.C.
(919) 942-4227

# Bogalusa: The Economics of Tragedy

The nation's press, with laudable zeal, has done full justice to the woeful catalogue of demonstrations, shootings, and countless court injunctions suffered by this paper-mill town in the past year. There has been little exploration, however, of the root causes of Bogalusa's racial agony: automation, economic frustration, and civic myopia. For Bogalusa is no redneck hamlet, dominated by musty antebellum tradition and the narrow paternalism of one entrenched and locally controlled industry. It is a town that until recently has prospered under the influence of a progressive national corporation and strong Northern-based labor unions. Yet despite these seemingly positive elements, it was here that, for the first time in the South, the economic urgency of the civil rights movement came clearly into focus: Negroes and whites fighting for the same jobs in a workforce drastically reduced by technological change.

Actually, Bogalusa's anguish was not unleashed by the economic demands of its Negroes; it was not even Negro-inspired. It began instead in December, 1964, when six prominent white residents -- three ministers, a publisher, a radio-station owner, and a lawyer -- became concerned because the town's public facilities were still segregated five months after the passage of the Civil Rights Act. They invited former Arkansas Congressman Brooks Hays, a racial moderate who is now associate director of the Community Relations

Service, to speak on the experience of other Southern communities in complying with the new law.

When the invitation became public, a cross was burned in front of the home of Reverend Bruce Shepherd, a signer of the invitation in whose church the meeting was to be held. Several thousand handbills with the following text were also distributed door to door:

> "[the purpose of this meeting] is to convince you that you should help integration by sitting in church with the black man, hiring more of them in your businesses, serving and eating with them in your cafes, and allowing your children to sit by filthy, runny-nosed, ragged, ugly little niggers in your public schools. We will know the names of all who are invited to the Brooks Hays meeting and we will know who did and did not attend this meeting....Those who do attend [will be] dealt with accordingly by the Knights of the Klu Klux Klan."

A few days later, the vestrymen of St. Matthews Episcopal Church voted seven to one against opening the parish hall for the Hays meeting; their insurance did not cover bombing. And on January 5, the invitation to Hays was withdrawn. "We searched our souls day and night," said Shepherd, a former combat bombardier in Korea. "Cars filled with Klansmen kept going by our house. We didn't want to give in to the Klan. But we had no one with us. We didn't have labor, business, city officials, or the law. We were just six guys bucking the whole town."

* * *

Why was it that Bogalusa, like Sodom, could not produce ten good men in a crisis? At least a partial answer is to be found in the brief but contradictory history of the town itself. In 1906, the Great Southern Lumber Company decided that Bogue Lusa -- Choctaw for "smoky water" -- would make an ideal location for the world's largest sawmill, to be surrounded by a town "laid out with...care and provision for the future." This care and provision included company houses, utilities, hospital, YM- and YWCA -- all the appurtenances of civilized living. But within fourteen years, the monster mill, consuming fifty acres a day, had almost depleted the surrounding forests. Great Southern responded by instituting in Bogalusa the first large-scale reforestation program in the history of the Southern lumber industry. By 1938, however, the local timber resources proved inadequate, and the company sold out to the Gaylord Container Corporation, a paper-products firm that in 1955 merged with the much larger Crown Zellerbach Corporation.

Crown knew little about the South when it came to Bogalusa. Its headquarters are in San Francisco and its twenty-six thousand employees are scattered for the most part over California, Washington, Oregon, and British Columbia. Since 1955, its sales have risen fifty-eight per cent to $622 million, making it the second largest paper-products manufacturer in the country. But in this highly competitive industry, this means only four per cent of the market. It also means continual plant modernization to keep pace with the industry's rapid technological change; by 1957, Crown had already built a new bag plant in Bogalusa.

Bringing the same progressive spirit to bear on its relations with the community, Crown began divesting itself of such utilities, houses, and stores still under traditional company control. But in 1960, the demands of competition collided with those of communal harmony. As Board Chairman Reed O. Hunt later explained: "...to make the mill fully competitive in the industry it had to be extensively modernized....It was also clear that the mill was greatly overstaffed and that the work force would have to be reduced....We made every effort to explain the situation to the union but tension inevitably developed."

This tension erupted in August, 1961, into a strike that lasted seven months. The company insists that, while it was a costly strike for all concerned, there was no residue of bitterness. But Paul Phillips, international president of the United Papermakers and Paperworkers, which maintains white and Negro locals in Bogalusa, hotly disagrees: "All that consultation stuff is malarkey. The company made those decisions unilaterally--that's why we struck. Our people felt the rug had been pulled out from under them."

Between 1961 and 1965, Crown spent more than $35 million on plant modernization and laid off five hundred Bogalusans, black and white. There was no program, city-, company-, or union-sponsored, to attract new industry or to retrain displaced workers. They were merely placed in Crown's pool of unassigned labor, known as the Extra Board, where from time to time they could find work, largely on a temporary basis. Since the Extra Board was segregated in 1961, displaced Negroes had access only to the most menial jobs. Nevertheless, unemployed whites were shocked to find themselves confronting Negroes in the same predicament -- and in the alarming context of a civil rights movement determined to destroy the social equilibrium upon which they depended.

It was in this tense social climate that Crown Zellerbach confronted Executive Order 10925, signed by President Kennedy in March, 1961, requiring all firms under government contract to provide equal-employment opportunities to their workers. Crown waited more than a year before it moved, and what it moved, by its own admission, was its mouth. "We were aware that this was the first initiative in Bogalusa to alter the accepted pattern of race relations in the community and that we were taking it after a prolonged labor dispute," Chairman Hunt recalled for the stockholders. "...We felt it was essential to move ahead on the basis of a patient and thorough explanation...."

In doing so, Crown ignored the experience of other Southern firms which have desegregated without incident: namely, that once a policy of integration is announced, a clearcut procedure pursued with reasonable speed is far less inflammatory than a "patient and thorough explanation" -- particularly if it lasts a year and a half! This lengthy study period was not, however, entirely Crown's responsibility. The other major parties were the white unions; and their sentiments were unequivocal and immoveable. When the company invited Victor Bussie, president of the Louisiana AFL-CIO Council, to assist in these discussions, the white unionists told him to go home. Bussie, one of the South's most effective labor leaders, is somewhat nonplussed about the United Papermakers and Paperworkers and the International Brotherhood of Pulp, Sulphite and Papermill Workers, who share jurisdiction over the 2,900 workers at Crown and another thirteen thousand in the state: "The state council has managed to keep the allegiance of most locals throughout the integration crisis, but not the paper unions; forty-five per cent of them have disaffiliated. Most of these locals are in small towns, and the bulk of their membership consists of farmers who quit the land recently or one generation back. It's the most fundamental kind of Southern conservatism, and the hardest kind to reason with."

* * *

There was another, though silent, partner to this company-union talkathon which lasted from the spring of 1962 until December, 1963 -- the General Services Administration, which had awarded several lucrative Federal contracts to Crown. During this period, the agency completed twenty-four reviews of the company's fair-employment practices and found them in compliance with government policy. GSA obviously based its approval on the company's plans for integration, since the plant remained totally segregated. But finally, in early 1964, Washington became impatient and began to prod Crown into action.

Separate plant entrances for Negroes and whites were abolished, along with separate drinking fountains (which now have long spouts and paper cups). The toilets, always a hazard, were integrated but with partitions between the white and Negro sections. Only after violence erupted last year did the company try to desegregate its restaurant. But no sooner did the Negroes arrive than the whites left, and the private concessionaire was forced to close. The integration of time clocks was also delayed until 1965, and, although the signs have been removed from the pay windows, Negroes are still expected to queue up at their old windows. In fact, Negro workers regard the company's handling of all these matters as neither prompt nor unequivocal.

However, Crown's most significant act was to integrate its Extra Board in May, 1964, enabling Negroes as well as whites to be assigned to jobs on the basis of seniority. But the company frankly concedes that the impact of this innovation was limited: "Due to the manpower situation in the mill, the labor turnover since the policy was put into effect has not been great. Consequently, few Negroes have been able to obtain permanent jobs in progression lines formerly set aside for whites. Few whites have moved into jobs formerly held by Negroes."

Nevertheless, to the white workers the integration of the Extra Board, after three years of reduced employment caused by automation, was the nightmare of Negro competition come true. The Klan lost no time exploiting the fear of job loss to Negroes; its ranks increased during 1964 to an estimated eight hundred members in a population of 22,000, reportedly the highest concentration in the South. And to job anxiety was added the agitation for civil rights legislation, the national outcry at the murders of Chaney, Schwerner, and Goodman, and finally, the passage of the Civil Rights Act, Title VII of which guaranteed the widening of the fair-employment breach so cautiously opened by Crown Zellerbach.

* * *

About noon on July 3, 1964, the day after the Civil Rights Act became law, two Negro girls, about twelve, sat down at the lunch counter of Woolworth's and requested service. Within an hour, a hundred white men had assembled in front of the store; they remained there until dark, although the children had long since fled.

In the rare, fortunate Southern community, a danger signal like this is promptly answered by a firm call for law and order from the powers that be. Here, the mantle rested on Crown Zellerbach, whose $19 million annual payroll provides seventy per cent of Bogalusa's income and which employs two of the town's four commissioners and several of its councilmen. But the company, having sounded an uncertain trumpet for plant integration two years earlier, chose to remain silent. So did Mayor Jesse F. Cutrer, the protege of Vertrees Young, a prominent local moderate and retired Crown vice-president. The resounding stillness extended into December before it was broken by the ill-fated invitation to Brooks Hays. When the Klan responded by intimidating the entire community, it ignited the racial confrontation that continues today.

At the time, the vigilante victory in forcing the withdrawal of the invitation seemed complete, and so it was -- inside Bogalusa. However, the Hays episode was widely reported by the press, and Crown's switchboard in San Francisco was soon deluged with calls from news media, irate citizens, and government officials. The company no longer hesitated to make its influence felt; a few days later Mayor Cutrer notified the Bogalusa Civic and Voters League, which represents the Negro community, that his police would provide full protection for the testing of public accomodations, starting on January 28, 1965.

The first day of testing went smoothly, and Mayor Cutrer, clearly relieved, declared the tests successful -- and concluded. But the Voters League, fired up by indignation, publicity, and Hope, regarded the one-day trial as merely an entering wedge and promptly scheduled a rally to launch a systematic assault on all of Bogalusa's segregated facilities.

"That was February 1st, and Ebenezer Baptist Church was packed. People in the aisles, in back, everywhere," Jacqueline Hicks, a leading militant, recalls. "Bill Yates and Steve Miller of CORE were telling us how much we could do in Bogalusa if only we stuck together and kept fighting. You should of heard the singing and the people calling out. We never had a meeting like that in this town before."

While the Negro church rocked with the first public apprehension of possibility, an equal but opposite excitement was stirring on Columbia Road, the town's main street, where white men were assembling and telling each other about the two white "outsiders" from CORE who were bringing bad trouble to Bogalusa.

Meanwhile, Yates and Miller had arrived at the Robert Hicks's home on East Ninth Street, where they were to spend the night. At 11:15 p.m., Chief of Police Claxton Knight came to inform them that he could no longer guarantee their safety in Bogalusa; he advised them to leave at once. It was a paralyzing moment for the Hickses: their two youngest children were at home, and it had not been easy to finance their pleasant, sprawling ranch house. "But we didn't even have to remember Chaney, Schwerner, and Goodman. We just knew that if Yates and Miller left our house at that moment, we would never see them alive again," Bob Hicks recalls. Informed that the two CORE workers would stay, Chief Knight took his leave with a parting warning: "We have better things to do than protect people who aren't wanted here."

While CORE, alerted by Yates and Miller, reached out frantically for help from Washington, word of the impending siege at the Hickses flashed through Jewtown, Poplas, Moden Quarters, and the other widely separated Negro sections. Within minutes, carloads of armed Negroes poured into East Ninth Street. It was now time for the rumors to travel the other way; the Klan never came near East Ninth Street. The Movement had finally arrived in Bogalusa.

* * *

These events, however, were still insufficient to elicit a law-and-order statement from Crown Zellerbach or the unions. Not until April 2 did the local Crown manager speak out against violence and intimidation, a reticence the company explained by insisting that civil rights is a community responsibility. "Today you might describe Bogalusa as a mill town, perhaps, but it is not a company town. We have worked hard to bring this change about," said a Crown spokesman. "We will not dictate to this community, or any community."

The international unions made no statement at all; nor did their locals take advantage of the mediation efforts of the AFL-CIO's Bussie, when he returned to Bogalusa in April to help establish communications between the town officials and the Voters League, now under new leadership.

This changing of the guard, a frequent occurrence in the civil rights struggle, was bound to happen here. The old preacher-teacher-insurance agent leadership of the Voters League lacked the nerve for the aggressive enterprises of Bogalusa's aroused Negroes. By April, A.Z. Young had assumed the presidency and Bob Hicks the vice-presidency of the organization. Both men had developed their skills and reputations in the service of Local 624, the Negro wing of the Pulp, Sulphite Union: Young was the local's president for a decade; Hicks was a trustee for years and is now on the grievance committee. Their union experience, moreover, has equipped them well to voice those fundamental economic grievances that do not surface in every civil rights battle but could hardly be suppressed in Bogalusa, where the median income for Negro families is only $2,200 a year.

Concentrating on this root problem, the Voters League launched a vigorous campaign for more and better jobs -- the thrust of which was naturally directed at Crown, which had already committed itself to a fair-employment policy. The League pounded away at the statistics: 9,000, or one out of three Bogalusans, are Negroes; yet of Crown's

2,900 employees, Negroes account for a mere 390, or one out of seven, and they are grouped in the poorest paid and least skilled jobs. At Crown as elsewhere, the demand for more jobs is inseparable from the demand for better jobs, since Negroes cannot hope to become a significant fraction of the work force without access to skilled positions.

The Voters League's first proposal was jobs for women, who presently lack any alternative to working as maids for $18 a week. Crown, which employed two hundred white women, did not have a single Negro woman on the payroll. But the League's fundamental demand was access to better paid skilled jobs. "I came to Crown in 1950," said Otha Peters, the current president of Negro Local 624, "the same time as Hilton Beard, the president of our white local. I couldn't go beyond porter, so I make $2.16 an hour, while Hilton, who is a millwright, makes $3.45. Sometimes we talk about it, and Hilton says, 'You should've been born a white boy.'"

When Chairman Hunt informed Crown's stockholders that, with the integration of the Extra Board, "The way is now open for any qualified employee, regardless of race or color, to move into any progression line in the mill on a permanent basis," he acknowledged the limitations imposed on this policy by the low labor turnover, due to automation and reduced sales, which left the plant operating at half capacity. And he did not mention that only nine Negroes had moved into formerly white job lines during the first year of integration.

According to Pedro Mondy, an official of Negro Papermakers Local 189A, it could hardly be otherwise: "Take the recovery room in the paper mill. There are twenty-two jobs; before '64, the top seventeen were restricted to whites, the bottom five to Negroes. Now supposing that after the company announced the integration, the senior Negro wants to move into a white job, which he knows how to handle 'cause he's done it in emergencies. He's got to leave his job, give up his seniority, go into the Extra Board, pass a tough test, and then wait his turn on the Extra Board. If he does get the job, he'll be the first one laid off. And if it's more than six weeks since he left his old job, he can't go back -- he's out of luck."

* * *

Repeated conferences during the first half of 1965 between the company, the unions, the Voters League, and local officials failed to produce a single new job for a Negro anywhere in Bogalusa. The pace of demonstrations accelerated, as did the physical attacks by white men and the jeering by their women and children. On June 2, Washington Parish Deputy Sheriff O'Neal Moore, a Negro, was slain and his partner seriously wounded by night riders. On July 8, Henry Austin of the black Deacons for Defense shot a white man who attacked a Negro child during a demonstration. Nearly one hundred people were arrested during those hectic weeks. And on July 10, CORE obtained a Federal injunction ordering the police to provide full protection to civil rights workers (subsequent injunctions have been issued against local officials, the Klan, and individual members of the police department).

Five days after the injunction, Crown Vice-President Francis M. Barnes flew from San Francisco to confer with the Bogalusa Voters League. It was a pilgrimage at least partially motivated by the prodding of the General Services Administration, which had just awarded Crown a new $12-million contract.

Confronting Barnes were three Negro women who had applied at Crown and "been turned around so often" that they kept asking local plant manager Roy Ferguson to repeat his assurance that henceforth the applications of Negro women would be accepted. Next followed an illuminating exchange between management and Bob Hicks:

Ferguson: "All jobs are open, Mr. Hicks, at this time. They may not have been open in the Past."

**Hicks:** "Not all jobs are open because they have some jobs for colored and some for whites as of today. My job is predominantly colored. I put in for this other [paste machine operator], my experience. I had done this job for a number of years before this automation came in. These [white] men had no experience, yet they were selected and put on that job. And then the same thing...you must take a test. It doesn't require a test for a man to do work that he has been doing for years. And in the department where I work, they bring white men in on these jobs that have training in other departments...yet we have to show them or they can't make it....But the job I'm in, no white man have sic ever worked in it....Yet and still, you turn right around and hire these [white] men that did not pass the test to come to work in the job that is especially for Negroes. Now these are the facts."

**Crown Lawyer:** "Would you go over that again?"

(The tests that Hicks referred to were instituted in January, 1963, after the company's announced intention of complying with Presidential Executive Order 10925.)

**League Lawyer:** "An employee told me that an examination for a manual labor category contained a question: 'If a man was fishing for two hours and caught three fish, if he fished the next day for five hours, how many fish would he catch?'"

**Barnes:** "What did he use for bait?" (Laughter)

**Hicks:** "Since the white man was hired before the test [was instituted] and promoted in the line of progression and wasn't subject to a test, why subject a man to a test now because he is black?"

As Robert F. Collins, one of the League's attorneys, said in summation: "The real issue is what, if anything, the company is willing to do to compensate for the past discrimination. To merely say that at this point you are going to be fair is not enough."

This is the view that most appalls the company and the white unions. No company answer was forthcoming or expected at this meeting, although Negroes credit it with two improvements later negotiated with Local 624: Negroes need no longer leave their old jobs and enter the Extra Board to apply for formerly white jobs, and they retain seniority on their old job in the event of return. But later, Delos Knight, Crown's public-relations officer in Bogalusa, spoke quite frankly about the League's demands: "Papermaking is still an art. Despite all the new machines, men still have to hold the paper up to the light to see if it's O.K. You can't turn the whole plant upside down and fire the people already working for you in order to right the wrongs of the past. There is no instant solution. This company cannot be expected to solve these problems by itself. The government will have to lay down industry-wide guidelines." President Phillips of the Papermakers put it in even stronger terms: "Even in all-white plants in the North, the top machine jobs take five years of training. You can't do more than start Negroes and whites in all job lines, and let them all move up. If you try to place every man according to seniority, you'll have to shut down the mill. The whites won't stand for it."

* * *

Thus the economic tragedy of Bogalusa, planted by automation and nurtured by the indecision, delay, and timorousness of Crown Zellerbach and the unions, has become by default the problem of the Federal government. Until recently, the voices of Knight and Phillips seemed to echo more loudly in Washington than those of Bogalusa's Negroes. Despite warm expressions of interest from the President's Commission on Fair Employment Practices, the last five months of 1965 saw no increase in the number of Negroes in white job lines at Crown. Then, on December

18, the commission finally acted. Chairman Franklin D. Roosevelt, Jr., conferred in New Orleans with top officials of Crown and the Negro and white locals of the United Papermakers. He extracted, with no little pressure, a pledge from both locals to accept the full integration of functionally related job lines, according to seniority and without tests or other bars to competent Negroes.

Though the details remain to be settled, the agreement appears to be a major triumph for the government, for law enforcement, and for Bogalusa's Negroes. But the triumph may be more apparent than real. "Sure, the agreement sounds good," says Bob Hicks. "But three days after it was made, a Negro recently promoted into a white job line found twenty hooded Klansmen waiting for him in the company parking lot, about ten yards from the mill entrance. They told him he'd better quit, and he did. The company said it couldn't do a thing about it. A few days ago, a Negro high school senior in a formerly all-white school was beaten up for the third time; he wants to quit, too. But Crown still won't discuss any community problems with the Voters League. And as long as the company keeps these attitudes, Bogalusa's troubles will continue."

-end-

SEDFRE

HICKS, ROBERT et al. VS. CROWN ZELLERBACH CORP. et al. NEW ORLEANS, LOUSIANA 1966
(JOB DISCRIMINATION)

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Folder

State Historical Society Of Wisconsin

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

| | |
|---|---|
| ROBERT HICKS, individually and on behalf of all others similiarly situated, Plaintiffs, | |
| v | |
| CROWN ZELLERBACH CORPORATION, THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS; MAGIC CITY LOCAL NO 362 OF THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AND BOGALUSA LOCAL 624 OF THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, Defendants | CIVIL ACTION NO. 16638<br>AMENDED COMPLAINT |

Pursuant to Rule 15 (a), Federal Rules of Civil Procedure which allows a party to amend his pleading once as a matter of course at any time before a responsive pleading is served and as defendants have not served a responsive pleading, plaintiffs in the above captioned suit amend their complaint in the following respects:

1. To add the following allegations to paragraph 4 of the section on "Parties":

'Defendant Corporation is licensed to do business in Louisiana, and its employment contracts are enforceable by virtue of Louisiana State law. Defendant's discrimination against Negroes reflects a long-standing State practice, custom, and usage. Defendant's enforcement of its discriminatory policies is a misuse of power possessed by virtue of State law, custom, and usage. This enforcement is made possible only because defendant is clothed with authority by virtue of state law, and is action "under color of State law, custom, or usage."

2. To add the following allegations concerning the defendant-labor unions of the section on "Parties".

" The International Union and Magic City Local No. 362 are responsible for the plant discrimination by the company in that they actively support, encourage, and acquiesce in such discrimination or, in the alternative, that they are parties to the collective bargining contract which supports such discrimination.

Bogalusa Local No 624 is a Negro local, of which the plaintiff is a member. Although said local does not actively support and encourage racial discrimination against plaintiff and members of his class, it indirectly contributes to discrimination by virtue of its being a party to the collective bargining contract."

3. To add to the prayer for relief the following subparagraph enjoining the defendant labor unions:

(o)from any act or/in action that would force aid, assist or in anyway help defendant Crown Zellerbach to continue its practices in violation of Title VII of the Civil Rights Act of 1964 42 U.S.C. Sec. 2000 e et seq.

4. To amend the prayer for relief so that the following subparagraphs of paragraph of the prayer for relief will read:

d. From permitting existance of plant facilities on any basis which leads to segregated facilities, including lockers, showers, and restroom facilities, and from failing to re-assign lockers on an alphabetical-numerical, seniority-numerical, or other non-discriminatory basis.

e. From permitting the existance of segregated lines of progression within a department, and from failing to merge the lines of progression in:

1. the Corrugator department in which the formerly Negro line of progression will then lead directly into the formerly white line of progression, the order of jobs being: (1) Porter, (2) Take-Off Man, (3) Rod Man, (4) Slitter Man, (5) Glue Pan Man, etc.

2. the Paster Department, in which the formerly Negro line of progression will then lead directly into the formerly white line of progression, the order of jobs being: (1) Sparehand, (2) Trucker, (3) Take-Off Man, (4) Rod Man, (5) Slitter Man, (6) First Helper, (7) Operator.

3. the Over-The-Road Trucking Department, in which the line of progression in ascending order shall be (1) Service Man, (2) Trucker.

j. From causing any Negro who transfers from a traditionally Negro department, line of progression, or job,to a predominantly white Department, line of progression, or job, to lose his seniority in the group from which he transferred, and from preventing him from being returned to his former slot in the event of a cut back.

k. From failing to restore the "scale man" job to the Negro line of progression in the shipping department from failing to remove the present assistant foreman, and from failing to open bids on these jobs to the Negroes in the line of progression with the hightest plant seniority.

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, La. 70113
523-5197

BY:________________________

Of Counsel

Alvin Bronstein
603 N. Parish St.
Jackson, Miss.

Harris David
2211 Dryades St.
New Orleans,La.

PARISH OF ORLEANS
STATE OF LOUISIANA

## ATTORNEYS AFFIDAVIT

I,                                        , after being duly sworn, do depose and say:

1. That I am an attorney qualified to practice law in the State of Louisiana, and in the United States District Court for the Eastern District of Louisiana.

2. That I am the duly authorized attorney for plaintiff herein.

3. That I have read the amended complaint and know the contents thereof.

4. That the facts stated therein are based upon personal interviews, and are upon information and belief, true as stated.

5. That I sign this affidavit instead of plaintiff because it deal with questions of fact and/or law, of which I, as an attorney, have more knowledge than that of plaintiff.

________________________________

SWORN TO AND SUBSCRIBED
BEFORE ME THIS      DAY
OF JUNE, 1966

________________________________

NOTARY PUBLIC

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

ROBERT HICKS, individually
and on behalf of all others
similarly situated

v.

CIVIL ACTION NO.

16638

Div'n B

Filed: June 16, 1966

CROWN ZELLERBACH CORPORATION
THE INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER
MILL WORKERS, MAGIC CITY
LOCAL NO. 362, OF THE INTERNATIONAL BROTHERHOOD OF PULP
SULPHITE AND PAPER MILL WORKERS,
BOGALUSA LOCAL 624 OF THE
INTERNATIONAL BROTHERHOOD OF
PULP, SULPHITE AND PAPER MILL
WORKERS.

* * * * * * * * * * * * * * * * *

## COMPLAINT

JURISDICTION:

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1343. This is a suit in equity authorized and pursuant to Title VII of the 1964 Civil Rights Act, 42 U.S.C. Sections 2000 (e) et seq., and 42 U.S.C. Section 1983. The jurisdiction of this Court is invoked to secure the protection of and to redress deprivation of rights secured by (a) Title VII of the 1964 Civil Rights Act, 42 U.S.C. Section 2000 (e), providing for injunctive and other relief against racial discrimination in employment, and (b) 42 U.S.C. Section 1981, providing for the equal rights of citizens and all persons within the jurisdiction of the United States.

PARTIES:

2. Plaintiff Robert Hicks is a Negro resident of Bogalusa, Louisiana, and a citizen of the United States and of the State of Louisiana. He has been employed as a "take off man" in the Corrugator Department of the Crown Zellerbach, Box Plant (Gaylord Container Division) in Bogalusa for the past 16 years.

He is 37 years old, a homeowner, a registered voter, married, and the father of five children.

3. Plaintiff sues on behalf of himself and on behalf of all other Negro employees and prospective employees similarly situated pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure.

The remaining plaintiffs constitute the class of Negro employees working at the Box Plant (Gaylord Container Division) Grocery Bag Plant, and Multiwall Bag Plant in Bogalusa, and all prospective Negro Employees at these plants.

There are common questions of law and fact affecting their rights to equal employment opportunity without discrimination on the ground of race or color, and a common relief is sought. The members of this class are so numerous as to make it impractical to bring them all before this Court. The interests of said class are adequately represented by plaintiff.

4. Defendant, the Crown Zellerbach Corporation, is a corporation incorporated under the laws of the State of Nevada, maintaining corporate headquarters in San Francisco, California, and doing business in Bogalusa, Louisiana. Defendant operates and maintains four plants in Bogalusa.

Defendant is an employer engaged in an industry which affects interstate commerce.

Defendant employs approximately 2900 employees and is by far the largest employer in Bogalusa.

5. Defendant, The International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, is an International Union which has jurisdiction over, and is the bargaining representative for employees at the Box, Grocery Bag. and Multiwall Plants of the Crown Zellerbach Corporation.

It exists for the purpose of dealing with employers, including defendant Crown Zellerbach, concerning grieviences, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment. It does business throughout the United States, its principle headquarters being located in Fort Edward, New York.

It is a union engaged in an industry which affects interstate commerce. It has over 100 members in Bogalusa.

6. Defendant, Magic City Local No. 362, is the white local union of the International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, It represents white employees at the Box, Grocery and Multiwall Crown Zellerbach plants in Bogalusa. It exists for the same purposes at the defendant International. It is engaged in an industry which affects interstate commerce and has over 100 members.

Defendant, Bogalusa Local No. 362, is the Negro local union of the INternational Brotherhood of Pulp, Sulphite, and Paper Mill workers. It represents Negro employees at the Box, Grocery Bag, and Multiwall Plants in Bogalusa. It exists for the same purpose as the defendant International.

NATURE OF THE CLAIM:

7. This is a class action seeking preliminary and permanent injunctions restraining defendants from maintaining a policy, practice, custom, and usage of racial discrimination and segregation, and of denying, attempting to deny, and otherwise interfering with the rights of plaintiff and others similarly situated to equal employment and promotional opportunities at the [illegible]

discrimination on the ground of race or color.

STATEMENT OF THE CLAIM:

8. After 16 years as a Crown employee plaintiff Hicks is still performing the same job for which he was originally hired.

(a) Past Discrimination

This resulted primarily from the racially segregated lines of progression maintained by defendant in the Corrugator Department where plaintiff works.

The Negro line of progression in ascending order is:

1. Unassigned
2. Take-off Man (0201 Machine)
3. Take-off Man (0208 Machine).
4. Rod man.

The white line of progression is ascending order is:

5. Slitter Man ( 0201 Machine)
6. Glue-Pam Man (0201 Machine)
7. Slitter Man (0208 Machine)
8. Glue Pan Man (0208 Machine)
9. Operator (0201 Machine)
10. Operator (0208 Machine)

The white jobs pay more than the Negro jobs.

Until approximately August, 1965, Negroes were not permitted to apply for the white line of progression.

Slitter Men were chosen from white employees who work on the Score machine in the Cutting Department, a different department.

This occured despite the natural functional relationship between the two lines of progression. Thus although one trained as a "take off" man had experience which well qualifies him for slitter man, this experience was ignored.

b. CONTINUING PRESENT DISCRIMINATION

1. With the advent of the intense civil rights movement in Bogalusa, and, in particular, negotiations between defendant Crown Zellerbach and Negro employees in or around August, 1965, Crown changed its policy, but in a manner which continues past discrimination against Negro employees.

Slitter jobs were opened to Negroes, only if they passed a qualifying test, and then satisfied traditional on the job training requirements.

Once having passed these barriers, Negroes would then become part-time slitter men who would fill in for the permanent slitter men who were sick or on vacation. The majority of their work time would be spent at their former jobs and former pay.

Part-time slitter men become permanent slitter men only after certain personnel from the "score group" in the cutting department moved into and up through the white line of progression.

PAGE 4 cont.

These "score" employees were held to have promotional rights which were superior to those of the Negro employees, and which pre-dated the testing program.

These are only three slitter positions at the bottom of the white line.

The effect of the test program combined with the inferior promotional rights granted to Negroes is to effectively exclude Negro employees from entering the white line of progression on a permanent basis for years to come.

The invidious discriminatory upshot of this system is to ignore plaintiffs' long years of experience in favor of much younger employees with much less plant seniority.

2. The test operates to continue past discrimination against Negroes because:

a. No incumbent white employees, had to take tests to enter the white line of progression. Qualifications for a job were determined by receptiveness to on-the-job training.

b. No whites now have to take tests to gain promotion within the white line of progression.

c. Five members of the "score" group held to have superior promotional rights to plaintiffs do not have to take the test.

d. The tests do not begin to measure the skills required for the slitter man job or for labor jobs in general but are more ~~in~~ akin to a general college aptitude test.

e. Slitter work bears a close functional relationship with jobs in the Negro line of progression. The tests discriminate because they ignore the years of related and actual slitter job experience which have prepared plaintiffs for slitterman work.

f. The tests are culturally biased against Negroes because they bring an inferior segregated education to the testing table.

g. The tests are unfairly graded. Plaintiffs are not formally notified of their test results. Upon inquiry thye are not allowed to see the tests; they are merely told the areas in which they are weak.

Plaintiff Hicks has frequently worked on the slitter machine and performed slitter man work. He and members of his class can with little training perform any job in the white line of progression

Yet plaintiff has failed to pass the qualifying test.

9. Defendant maintains segregated lines of progression in the corrugator Department, and permit employees outside the department to bid on slitter jobs. This permits white employees to bid on desirable jobs without working their way up through the Negro line of progression, even though they have less seniority then Negroes who have worked their way up through the Negro line of progression. This system nullifies plaintiffs' long years of departmental experience and plant service as a criteria for advancement.

This system is particularly discriminatory since the Negro line of progression is functionally related to and leads naturally into the white line of progression.

10. Defendant Crown Zellerbach has discriminated against Negroes in its hiring practices. The Negro population in Bogalusa is one third the white population; the number of Negro employees at defendant's plants is approximately one eighth the number of white employees. There are no Negro females employed in production jobs at the Box, Grocery Bag, and Multiwall Bag plants. In many departments there are no Negro employees.

Further, the recently instituted pre-employment test is graded unequally in favor of white employees.

11. Defendants have denied Negroes equal promotional opportunities in the Shipping Department of the Box plant. The "scale man" job, formerly the top position in the predominantly Negro line of progression, was always staffed by white men. When Negroes expressed interest in the scale job, defendants reclassified the job as "assistant foreman", thereby placing the job under management's jurisdiction. Defendant Crown Zellerbach has continued to staff the position with whites. Consequently Negro employees with approximately fifteen to twenty years of plant experience are being supervised by white employees in their early twenties.

12. Racial Discrimination exists in the Over The Road Trucking Department of the Box plant. All service men are Negroes; all drivers are white. Negro service men train the new white truckdrivers who then fill the easier, more desirable, higher paying jobs.

There is no line of progression from service men to truckers.

The newly instituted qualifying test is a prerequisite for employment as a truckdriver.

13. Defendants maintain segregated lines of progression in the Paster Department of the Box Plant, although the Negro line merges naturally into the white line.

As in the Corrugator Department, a test has been interposed between the two lines.

14. Almost all janitor positions are staffed by Negroes.

The miscellaneous labor group is comprised of Negroes.

Departmental janitors do not move up in the departmental line of progression, but advance only in the janitorial miscellaneous labor group line of progression. The result is to keep Negroes in the more menial, lower paying tasks.

15. Prior to the Civil Rights Movement in Bogalusa in the summer of 1965 defendant Crown Zellerbach maintained segregated facilities marked by segregated signs. In or about September, 1965 defendant built new shower, bathroom, and locker facilities. The new constructions were arranged in a manner which forced continued segregation in plant facilities.

16. Plaintiffs have been and are being denied equal employment and promotional opportunities because of their race and color in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000 (e) et seq., and 42 U.S.C. 1981.

ADMINISTRATIVE BACKGROUND:

17. Neither the State of Louisiana, nor the City of Bogalusa has a law prohibiting the unlawful practices alleged herein.

On November 16, 1965, plaintiffs filed a complaint against Crown Zellerbach with the Equal Employment Opportunities Commission alleging denial of their rights under Title VII of the 1964 Civil Rights Act. On March 3, 1966 the Commission found reasonable cause to believe that violations of the Act had occurred by defendant Crown Zellerbach.

Because of continued discrimination by Crown plaintiff filed a similar complaint on March 16, 1966.

On April 16, 1966, plaintiff filed a similar complaint with the Commission against:

1) Magic City Local No. 362, the white local union

2) Bogalusa Local No 624, the Negro local union

3) The International Brotherhood of Pulp, Sulphite, and Paper Mill Workers

This complaint also contained an additional allegation against defendant Crown Zellerbach.

Efforts at corcilliation by the Commission have not achieved voluntary compliance with the law. This suit is therefore necessary.

18. Plaintiffs have no plain, adequate or complete remedy to redress the wrongs alleged, and this suit for a preliminary and permanent injuction is their only means of securing adequate relief. Plaintiff and the class he represents are now suffering and will continue to suffer irreperable injury from defendants' policies practice, customs and usage as set forth herein.

WHEREFORE, plaintiff respectfully prays this Court advance this case on the docket, order a speedy hearing at the earliest practicable date and upon such hearing to:

1. Grant plaintiff and the class he represents a preliminary and permanent injuction enjoining defendants, their agents, successors employees, attorneys and those acting in concert with them and at their direction:

a) from continuing or maintaining the policy, practice, custom, and usuage of denying, abridging, withholding conditioning, limiting, or otherwise interfering with the right of plaintiffs to enjoy equal employment opportunity as secured by Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000 (e) et seq., and 42 U.S.C. 1981 without discrimination on the basis of race or color.

b) from utitizing th recent testing system as a basis for promotion for present employees and in particular from using the Wonderlic, Thurston Clerical or other similar tests as a basis for promotion.

c) from denying plaintiff and members of his class promotion on the same basis to which white employees to have been accustomed-on the job training

d) From permitting existence of plant facilities on any basis which leads to segregated facilities, including lockers, showers, and restroom facilities, and from re-assigning lockers on an alphabetical-numerical, seniority-numerical, or other non-discriminatory basis.

e) From permitting the existence of segregated lines of progression within a department, and from permitting a merger of the line of progression in:

1) The corrugator department in which the Negro line of progression shall lead directly into the white line of progression the order of jobs being (1) Porter (2) Take-off man (3) Rod Man (4) Slitter Man (5) Glue Pan Man etc.

2) The Paster Department in which the Negro line of progression shall lead directly into the white line of progression, the order of jobs being, (1) Sparehand (2) Trucker (3) Take-off Man (4) Rod Man (5) Slitter Man (6) 1st Helper (7) Operator

3) The Over-the-Road-Trucking Department in which the line of progression in ascending order shall be (1) Service Man (2) Trucker

f) From prohibiting departmental janitors from being a part of and moving up in the line of progression in their departments.

g) From permitting employees on the score machine in the cutting department from bidding on slitter man jobs in the corrugator department until all Negroes employees in the Corrugator Department who have greater plant seniority have had an opportunity at the job.

h) From permitting bids on any but the lowest jobs in a line of progression, by employees outside the line of progression, until all employees in the line of progression, have had an opportunity at the vacancies which occur above them.

i) From denying entrance into a line of progression in a different department on the grounds of race or color, and from denying said entrance to the applicant with the greatest plant seniority who meets on the job training requirements.

j) From preventing any Negro who transfers from a traditionally Negro department, line of progression or job, to a white ~~line of~~ Department, line of progression, or job, from losing his seniority in the group from which he transferred, and from being returned to his former slot in the event of a cut-back.

k) From restoring the "scale man" job to the Negro line of progression, "in" the shipping department, from removing the present assistant foremen, and for opening bids on these jobs to the Negroes in the line of progression with the highest plant seniority

l) From denying Negroes, male and female, employment throughout the plants on the basis of race or color.

m) From unequally grading pre-employment tests in favor of white employees. From failing to submit graded copies of all pre-employment tests to the Equal Employment Opportunity Commission designating on each test, the race of the applicant, the questions answered correctly the test score, and whether the applicant passed or failed.

n) From retaliating or attempting to retatiate against plaintiff or any witness against defendants in these preceedings in any manner, including intimidation, harassment discrimination or any other measures which affect his wages, hours, or working conditions.

Plaintiffs further pray that they be allowed their costs herein including reasonable attorneys fees, and such other or additional relief or may appear to the Court to be equitable and just.

Respectfully submitted,
COLLINS, DOUGLAS & ELIE
2211 Dryades Street
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BY: Nils R Douglas

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PARISH OF ORLEANS

STATE OF LOUISIANA

## ATTORNEYS AFFIDAVIT

I, Nils R. Douglas, after being duly sworn, do depose and say:

1. That I am an attorney qualified to practice law in the State of Louisiana, and in the United States District Court for the Eastern District of Louisiana.

2. That I am the duly authorized attorney for plaintiff herein.

3. That I have read the complaint and know the contents thereof.

4. That the facts stated therein are based up personal interviews, and are upon information and belief, true as stated.

5. That I sign this affidavit instead of plaintiff because it deal with questions of fact and/or law, of which I, as an attorney, have more knowlege than that of plaintiff.

Nils R. Douglas

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 14th DAY
OF JUNE 1966.

Lolis E. Elie
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

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ROBERT HICKS, et al.,
Plaintiffs

v.

CROWN ZELLERBACH CORPORATION, et al.,
Defendants

---

# PLAINTIFFS' MEMORANDUM OF LAW

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Dated: September 22, 1967

# PLAINTIFF'S MEMORANDUM OF LAW

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## INTRODUCTORY STATEMENT

This case arises against the backdrop of long years of rigid and persistent racial discrimination by the defendant Crown Zellerbach Corporation at its Box Plant in Bogalusa. As late as 1964, long after Executive Orders prohibited discrimination in employment by government contractors,[*] the vast majority of the jobs in this plant, including all of the most desirable jobs, were restricted to white employees. Negro employees were relegated to a handful of low paying, physically demanding jobs. The locker facilities at the plant were segregated until after the institution of this action. To this day, segregated local unions for white and for Negroes are maintained in blatant violation of law.

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[*] The first Presidential Executive Order barring discrimination in employment by government contractors was Executive Order 10308, 16 Fed. Reg. 12303, issued by President Truman in 1951, promulgated by President Kennedy, 26 Fed. Reg. 1977. The Kennedy Order was revised by President Johnson in 1965, Executive Order 11246, 30 Fed. Reg. 1977. Throughout this period, Crown was required to attest to a policy of non-discrimination in employment as a condition of government contracts.

In March, 1964, on the eve of the enactment of the equal employment provisions of the Civil Rights Act of 1964, Crown relinquished the formal racial restrictions on the Box Plant jobs. The actual barriers to the movement of Negro employees into white jobs, however, were not permitted to fall. This case is principally concerned with the legality of several policies and procedures continued or instituted by Crown which, while not cast in racial terms, have the direct effect of perpetuating the discrimination against Negroes.

First, when the formal racial restrictions were abandoned in 1964, Crown retained the separate lines of progression that had been established for Negroes and for whites working on the same machine or machines in the Corrugator, Paster and Trucking departments. Negro employees, who for many years had filled closely related jobs, were relegated to the right to bid on openings in the white progression line in their own department in competition with all other employees in the plant. This has placed a severe restriction on Negro promotion in these departments, which is not imposed on lower level employees in any of the departments that had been totally reserved for white employees.

Second, Negro employees are denied all promotional security upon entry into a white progression line, regardless of their years of employment within the plant. For purposes of promotion, they are treated exactly like new employees. Promotions within a white line are awarded on the basis of time in that line--time that Negro employees were, until recently, prohibited from acquiring.

Third, Negro employees are permitted to enter white progression lines, which lead to desirable high paying jobs, only on the condition that they suffer the reduction in wage that would generally be associated with movement from a Negro progression line job into the entry job in the white line. This economic hardship effectively discourages transfers.

Fourth, within a few weeks after the formal racial restrictions were abandoned, Crown adopted a policy that prohibited Negro employees from transferring to white jobs, unless they were able to pass a battery of written personnel tests. The testing requirement was not applied to incumbent whites, either as a condition of retaining their jobs, or as a condition of securing promotions within their group or line of progression. In addition, all applicants were required to pass the tests as a condition of employment.

These tests have operated to screen out significantly more Negroes than whites. They were adopted without any effort by Crown to determine their validity in measuring the relevant skills. The evidence adduced at trial indicates that these tests are not valid measuring instruments for any of the jobs in the Box Plant.

As a result of these practices, only a single Negro who was employed by Crown in March, 1964, has since been accepted and trained for entry into a white progression line. No Negro employee entered a white line from a related Negro line in the same department, and no Negro employee entered a white job under circumstances in which it would have been necessary to suffer a reduction in earnings.*

In this case, plaintiff contends that Title VII requires more than Crown's belated pronouncement that it has abandoned its policy of discrimination. It requires that the defendants act to provide a fair opportunity for Negro employees to transfer and secure promotions on a non-discriminatory basis, by eliminating those practices that effectively maintain the naked racial restrictions which Crown applied until 1964. Specifically, Title VII requires that the defendants

1. merge functionally related lines of progression that have been maintained separately for purposes of racial segregation;

2. award promotions in the formerly all-white progression line on a basis that does not continue to

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* Finding # 58 . At trial, the resident manager of the Box Plant, Gus Bienvenue, listed twelve Negroes who had worked in formerly all-white jobs as of March 19, 1967. (Tr. 578-85). Only one, Milton Evans, was employed by the Company prior to March, 1964. DX 21. Evans moved from a Power Trucker job to relief slitterman (1201) in the Corrugator Group. (Tr. 1083).

penalize Negro employees for the years they were barred by discrimination from earning seniority in the white line;

3. permit incumbent Negro employees to transfer to the entry position in white progression lines, without suffering any reduction in actual earnings;

4. permit Negro employees to transfer to white progression lines without satisfying a testing requirement that was not, and is not, required of incumbent whites.

Further, plaintiff contends that Title VII prohibits Crown from conditioning employment or transfer on the successful completion of a test battery that has not been professionally validated, that does not accurately measure relevant skills, and that excludes from consideration a vastly greater percentage of Negroes than whites.

On every issue, this is a case of first impression. Its outcome will provide a basic precedent for the administration and enforcement of the equal employment provisions of the Civil Rights Act of 1964.

## ARGUMENT

### I. THE MAINTENANCE OF SEPARATE LINES OF PROGRESSION IN THE DEPARTMENTS IN WHICH PRODUCTION WORK WAS OPEN TO NEGROES PRIOR TO 1964 IS UNLAWFUL

Plaintiff does not contend that Title VII dictates any particular system of filling plant vacancies as they occur. Clearly, any system that does not discriminate against Negro employees can be adopted. Vacancies can be filled on the basis of plant wide seniority, or on the basis of departmental seniority. Lines of progression can be created for the purpose of regulating promotions. Indeed, separate lines of progression can be structured for the skilled and unskilled jobs in the same department or on the same machines. It seems plain, however, that whatever system is adopted must be applied even-handedly; the system cannot be varied whenever it would disadvantage Negro employees to do so. This is precisely what Crown has done with the promotional system in the Box Plant.

Specifically, in all the departments that were completely foreclosed to Negroes prior to 1964, the prevailing lines of progression invariably include every job on a machine, and generally include every job on a related group of machines. In these departments no principal effect of enabling whites to move into these departments ahead of Negroes who have been there for years, without offering Negroes a similar opportunity in any of the formerly all-white departments. The inequity is patent.

In summary, on this issue of the case, plaintiff contends:

A. that the prevailing standard for promotion at the Box Plant (other than in the departments here in dispute) is promotion through lines of progression that start with unskilled jobs and lead to the more highly skilled jobs;

B. that jobs in the Corrugator Department, Paster Department and Over the Road Trucking Department have at least as much relation, one to the other, as jobs in any of the other departments in the plant, and that the uniform practice at Crown's other plant and throughout the industry vouches for the suitability of including all these jobs in a single line of progression;

C. that the separate progression lines in these three departments were established for the purpose of segregating and limiting the opportunities of Negro employees, and that the retention of these separate lines-- at the same time that unitary lines of progression are maintained elsewhere in the plant-- constitutes a "limitation, segregation or classification of employees" in a manner that "deprives or tends to deprive" the Negro employees in these departments "of employment opportunities... because of... race..." in violation of Section 703(a)(2) of the Civil Rights Act of 1964.

### A. Outside the Corrugator, Paster and Trucking Departments All Jobs On A Single Machine or A Group of Related Machines are in Single Lines of Progression

A cursory examination of the current Seniority Agreement in the Box Plant, Plaintiff's Exhibit 8, makes plain that outside the Corrugator, Paster and Trucking Departments all jobs on a single machine or a related group of machines are in a single line of progression. See, for example, the line of progression for the Swift Slotter Group (PX 8, p. 17), the Score Group (Id., p. 18), the Finishing Department (Id., p. 31), and the line of progression of jobs on the Post Gluer and the Beer End Gluer in the Miscellaneous Finishing Department (Id., p. 35). There are no exceptions. Indeed, in the Cutting Department, the lines of progression in the Die Cutting

Group and the Miscellaneous Group run directly into the lines of progression for the Swift Slotter Group and the Printer Slotter Group, where greater skills are required.

It is also plain that these lines of progression include skilled as well as unskilled jobs; the defendants have never contended the contrary. Mr. Leo White, the Superintendent of the Box Plant, testified that the operator of the Post Gluer Machine (the senior job in the line of progression for the Post and Beer End Gluer Group) "requires considerable skills and close adjustments". By contrast, he testified that the skills required for the job of take off man on the Beer End Gluers (the lowest job in that line of progression) "would not be extremely high." (Tr. 1405-06). Mr. White further testified that the crane operator, at the top of the Warehouse Group is a job that requires "great skill". He also testified that the spare hand job, at the bottom of that line, is not a skilled job. (Tr. 1407-08). Mr. White testified to the same effect concerning the jobs in the higher and lower levels of the Cutting Department. (Tr. 1408-09).

This testimony was confirmed by the testimony of an expert witness called by Crown, Dr. Allyn Munger. The thrust of Dr. Munger's entire presentation, and indeed the thrust of Crown's defense on the testing issues in this case, was that, outside the Corrugator and Paster Departments, the only production jobs that are skilled jobs are the machine operator's positions in the Cutting, Finishing and Post and Beer End Gluer Departments. (Munger Dep., pp. 9-118). Dr. Munger made it quite plain that he did not consider the lower level jobs in these departments to be skilled jobs. He specifically testified that the helper on the slitter machine in the Cutting Department, a job that until July, 1965 led to the top level Corrugator group through a line of progression (Second Stipulation, para. 9; PX 8, p. 18), "simply picks up the trash. He is essentially a take off man." (Munger Dep., p. 158).

Any possible doubt that the lines of progression outside the Corrugator, Paster and Trucking Departments include both skilled and unskilled jobs is eliminated by an examination of the job descriptions of the production jobs in the Cutting, Finishing and Miscellaneous Finishing Departments submitted by Crown in response to Interrogatory 4 of Plaintiff's First Interrogatories. (PX 22, pp. 5-14 (Cutting Department), 14-19 (Finishing

Department), 19-21 (Miscellaneous Finishing Department)). In each of these departments, an employee in the most menial bundler or spare hand position can progress by means of seniority promotions within the line of progression to the most complicated operator's job in the department. (PX 8, pp. 15, 17, 18 (Cutting Department), pp. 31-33 (Finishing Department); p. 35 (Miscellaneous Finishing Department)). Any problem that might otherwise be created for the employer by unqualified employees seeking promotion to a skilled job is avoided by the company's paramount right to reject for promotion an otherwise eligible employee when he lacks the ability to perform the job. (Finding 55). According to the testimony of Mr. Bienvenu, the Resident Manager of the Box Plant, this right is regularly exercised by the company. (Tr. 1056, 1076-77). In sum, outside the Paster, Corrugator and Trucking Departments, Crown has not felt the need to separate lines of progression for skilled and unskilled workers to protect itself against unqualified employees gaining promotion to skilled jobs.

### B. If the Standard Prevailing In Other Departments Were Applied in the Corrugator, Paster and Trucking Departments, All the Jobs in These Departments Would Be in a Single Line of Progression

There has been a good deal of discussion in this case concerning the relative skill requirements and the degree of functional relation of the Negro and white jobs in the Corrugator, Paster and Trucking Departments in the Box Plant. Although the record supports plaintiff's position that these sets of jobs are closely related, and that the differences in skill level are typical differences in ascending steps of a line of progression, these questions are, to a very substantial extent, beside the point. The point is that the defendants have adopted a promotional system for the Box Plant in Bogalusa in which all jobs on a single machine or a group of related machines are in a single line of progression. Applying this standard to the three departments in which racially segregated lines of progression have been maintained, it is quite plain that in each case all the jobs in the department would be included in a single line of progression.

The evidence of record makes clear that there are no special considerations that would justify the deviation from this general standard by the maintenance of two separate lines of progression in any of these departments. To the contrary, the evidence shows that there are strong reasons for including all the jobs in each of these departments in a single progression line.

First, the uniform practice throughout the industry, wherever lines of progression govern the movement of employees, is to include all corrugator department employees in a single line of progression. (Findings 26, 31, 36). The collective bargaining agreements covering the thirteen box plants operated by Crown outside Bogalusa, and the forty-seven additional agreements covering box plants at which the defendant International is the collective bargaining agent of box plant employees were the subject of stipulation in this case. (Second Stipulation, paras. 15-27; Third Stipulation, paras. 1-49). Thirty-seven of these sixty agreements, including six agreements to which Crown is a party, apply to plants at which promotions are governed by lines of progression. In each such case, all the jobs in the corrugator department are included in a single line of progression. In no case is there any division between the rod and take off jobs--the Negro jobs in the Bogalusa Box Plant--on the one hand, and the slitter, glue pan and operator jobs--the white jobs in Bogalusa--on the other. (Findings 26, 31). In six additional agreements, including one Crown agreement, corrugator department vacancies are filled on a seniority basis from among all the employees in the corrugator department. (Findings 27, 34). This consistent industry practice makes plain the suitability and practicality of including the rod and take off jobs in the same progression line as the slitter, glue man and operator's jobs on the Corrugator Machines and on the Paster Machine at the Bogalusa Box Plant.

Second, the only expert on the corrugator industry to testify in this case was Mr. Leslie Roberts, Trade Union Administrator assigned to Corrugator Industries of a major AFL-CIO international union.

Mr. Roberts is a man with many years experience in the industry, both as an employee on the corrugator machines, a union official and a job analyst. (Roberts Dep., pp. 3-12). Mr. Roberts testified that the separation of the rod and take off jobs from the other corrugator jobs for the purpose of structuring departments or lines of progression is inconsistent with "sound practice" and "the most efficient way of functioning." (Id., p. 21). Further, Roberts testified that work in the take off position is generally regarded as "fundamental training" for work as slitterman. (Id., p. 17). He explained that the slitterman and the take off man "work very closely together as a team controlling and being responsible for the production and efficiency of the dry end of the machine." (Id., p. 17). He testified that a take off man has the opportunity to acquire a substantial portion of the skills necessary to serve as a slitterman, and that the move from take off to slitter is a "normal move" and "in the overwhelming instances... a very successful move." (Id., p. 18).

In addition, Roberts testified that the Rod Man and the Glue Pan Man work together as a team at the "wet end" of the machine. (Id., pp. 19, 29). He stated that rod men have the opportunity for on the job training for the glue pan position, and that a move from the rod to the glue pan position is normally made without difficulty. (Id., pp. 19-20). In the Bogalusa Box Plant, an employee with some experience in the rod position has already served as take off man and thus has had on the job training for both the slitter and the glue pan position. Indeed, Roberts testified that in plants where a system of plant wide bidding for vacancies prevails, the customary practice is to promote take off men to the slitter man job and the rod man to the glue pan man position on the basis of the specialized on-the-job training received by these employees. (Id., pp. 15-20).

Third, the record establishes that there is a very substantial interrelationship between the Negro and white jobs in the Corrugator, Paster and Trucking departments. (Findings 38-51). Mr. Milton Evans, who is assigned on a temporary basis to the 0201 Slitter Position, the entry position in the Corrugator Group, and a position closely comparable to the entry position in Paster Group #1, testified that it would have been a great deal easier for him to learn the slitter job if he had had prior experience in the take off position. He testified that the difficulty he had in learning the job was not with setting the knives and scores, which he described as a rather simple mechanical task, but with the numerous other responsibilities of the slitterman in the overall operation of the machine: supervision of quality, supervision of count, feeding the product into the knives, assisting the take off men when necessary in making mechanical adjustments in their station, reading and understanding the order, etc. (Tr. 1089, 1099, 1115-16, 1119-20).

Evans, and plaintiff Hicks, the only take off man to testify, both stated that there are numerous functions that the slitterman performs together with the take off man. (Tr. 1105-13, 1118 (Evans), 1196-99 (Hicks)). Hicks testified that he had the opportunity to observe the slitterman set the knives and scores "millions of times." (Tr. 1201).

Fourth, the position of rod man is the top ranking position in both the Corrugator Rod and Take Off Group and Paster Group #2, and is the position from which employees would move to the slitter positions on the respective machines if the lines were merged. Until 1966, the rod position on the Paster was included in Paster Group #1. (Finding 23). In other words, as far back as 1947 and until 1966, a line of progression led from rod man on the Paster to slitterman and from there all the way up to operator. (DX 24). The defendants apparently had no concern during this twenty-year period about the suitability of these promotions.

The rod job on the Paster was transferred from Paster Group #1 (the white group) to Paster Group #2 (the Negro group) in 1966 as a result of conferences between Crown and the Equal Employment Opportunity Commission. (Tr. 1298-99). It is fair to conclude that this change was made for the purpose of providing greater job opportunity to the Negro men in Paster Group #2 and no other reason. With this background, Crown's argument that the merger of the lines of progression in the Corrugator and the Paster Departments, which would permit the rod men to progress to the slitter job and reinstitute the nexus between the rod and slitter job that existed for some years on the Paster, would adversely affect the operations of these departments can hardly be taken seriously.

In sum, the considerations particular to the departments in issue support, rather than detract in any way, from the conclusion based on plant wide practice that all the jobs in each of these departments should be included in a single line of progression.

### C. Title VII Prohibits the Maintenance of A Promotional System in the Corrugator, Paster and Trucking Departments that is Inconsistent with the System Elsewhere in the Plant and is Detrimental to Negro Employees

Although the defendants have attempted to justify the bizarre progression lines in the Corrugator, Paster and Trucking Departments on a non-racial basis, the history of these lines, the close relationship of the jobs in question, the practice at other Crown plants, the practice at other non-Crown plants, the position of the rod job in Paster Group #1 until 1966, and Crown's inconsistent practice in other departments of the Bogalusa Box Plant, all combine to refute this contention. It is quite clear that the criterion for placement of a job in one line or another in 1947, when these lines were constructed, was the race of the incumbent workers. The purpose of the separate lines in each of these departments was to allocate jobs between Negro and white employees, and specifically to reserve the better jobs for white employees, in keeping with defendants' practice of allocating all jobs in this manner until 1964. By retaining the separate lines after the formal racial restrictions were abandoned, the opportunity for advancement of the Negro employees in these departments was severely limited.

Section 703(a) of the Act provides that it is unlawful for any employer "to limit, segregate, or classify his employees in any way which would tend to deprive any individual of employment opportunities... because of his race..." Under this prohibition, it seems clear that whatever promotional principle is to apply, whether it be plant wide bidding for all jobs, or plant wide bidding between skilled and unskilled jobs in every department, or whether it is to be lines of progression from the less skilled to the more skilled jobs in a single department or group, the principle must be applied evenhandedly.

What the defendants have done, however, is to open for plant wide bidding the only desirable jobs in the plant that Negro employees would now be entitled to enter by virtue of unitary departmental lines of progression. At the same time, desirable high paying jobs in other departments that have been restricted to whites are left within formal lines of progression, and for many years to come can only be filled by white employees. Negro employees are permitted to enter these departments only by transferring to the lowest level position. In other words, the defendants are reserving to white employees in other departments the exclusive right to enter skilled jobs in the departments in which these whites have held unskilled jobs. It is only in the departments where Negroes have held the unskilled jobs that the department wide (or machine wide) line of progression principle is abandoned and plant wide bidding is installed.

Title VII prohibits the defendants from continuing a practice that is founded on racial discrimination, and that deprives Negro employees of opportunities within their departments comparable to the opportunities afforded white workers. Merger of the lines of progression in the Corrugator and Paster Departments, and the creation of a line of progression between the Negro and the white jobs in the Trucking Departments would place the promotional system in these departments on equal footing with systems prevailing in the departments in the plant that have been traditionally restricted to whites.*

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* See Gould, Employment Security, Seniority and Race: The Role of Title VII of the Civil Rights Act of 1964, 13 Howard L. J. 1, 39 (1967):

> Let us then examine specific fact situations based on cases which have come before the Commission. The first of such is a case where there is little functional distinction between the work that Negroes and whites perform. This is quite common in the paper industry, for instance, where the Crown Zellerbach agreement took place. Negroes may work as "helpers" to whites on one part of a series of operations. Differences in assignments and skills requisite thereto are generally small; but Negroes are paid less and are placed on a separate line of progression. Ordinarily, in such cases, it can be said that the seniority unit would be much broader absent racial considerations.
>
> Here the equitable and practicable solution required by Title VII should be merger of seniority lines....

## II. DEFENDANTS' PROMOTIONAL PROCEDURES DISCRIMINATE AGAINST INCUMBENT NEGRO EMPLOYEES

The preceding section of this memorandum dealt with the opportunities of Negro employees in the Corrugator, Paster and Trucking Departments to enter the more desirable white progression lines in those departments. This section is addressed to the somewhat different matter of promotional opportunities for Negro employees after they have entered a white line of progression. The question here is one of the rate of movement upward in a progression line after entry, rather than one of entry into the line.

Under the existing practice at the Box Plant, the right of an employee to promotion up through a line of progression is based on his seniority in his job or in a sub-group within the line, subject, of course, to Crown's right to determine whether he has the ability to move up. Findings 54,55. For example, an employee newly entering the Finishing Department line begins in Unassigned Group #3, which is the feeder group to the line. He will not be promoted out of this unassigned group to a permanent job in the progression ladder, until he has spent more time in the unassigned group than any other employee. The amount of time he may have spent in the plant in other jobs is irrelevant to the question of his promotion in the white line. Further promotions up the line will continue on the basis of group or job seniority.

While this system purports to treat all employees fairly, and in fact might do so in a plant without a history of racial discrimination, in operation in the Crown Box Plant it is overwhelmingly biased against Negro employees, because the standard of promotion is the acquired tenure in jobs that until recently were restricted to whites. This is a kind of tenure that Crown has prohibited Negroes from acquiring. For this reason, the defendants' promotional policies clearly constitute a "term, condition, or privilege of employment" which discriminates against these Negroes. Plaintiffs submit that Title VII does not permit an employer to deny promotion to a qualified Negro employee on the ground that the seniority of the Negro was not earned in white jobs. The practical result of this system is that no Negro employee will be able to achieve an upper level job in a line of progression until the job has been offered to every single white who entered the line during the period of racial restrictions. In this situation, senior Negro employees will reach mandatory retirement age before they have the opportunity for promotion to a top level white job.

Title VII does not demand that defendants adopt any particular promotional system in place of the present discriminatory one. Any alternative that is neutral in its effects on future promotional rights of present white and Negro employees is acceptable. With regard to new employees coming into the plant, the present system may be neutral since

Negroes and whites will presumably have equal access to all jobs after this case has been concluded. With regard to long term Negro employees, who suffered the exclusion from white jobs, a promotional system based on years of seniority within the entire plant would be neutral in its operation. Such a system of plant-wide seniority is well recognized in industry and is in fact the system most commonly used:

> "A study of a number of contract changes over the past twenty years permits the following observations: The trend is toward use of a single seniority date, usually the date of original hire in the company. . ." Slichter, Healy & Hivernash, The Impact of Collective Bargaining on Management, at 127 (1960).

The propriety of requiring a plant-wide seniority system as a neutral alternative to a discriminatory system capitalizing on prior discrimination has been endorsed in the thoughtful analysis of Title VII's impact on seniority systems in the April 1967 issue of the Harvard Law Review:

> When the substantive provisions of Title VII become effective, the title immediately bars any further application of discriminatory seniority rules, such as those which exclude Negroes from particular jobs . . . Yet, the past operation of a discriminatory system will have established a particular distribution of jobs among the plant's employees and a fixed competitive standing among them with respect to future job movements. For example, white workers will have acquired seniority rights in the jobs in a "white" unit from which Negroes have been excluded, and so long as these rights remain unchanged, even the most junior white will have a seniority status with respect to these jobs superior to that of the

> most senior man in the Negro unit, when the latter transfers into the formerly "white" unit.
>
> ...(T)he "rightful place" approach, holds that the continued maintenance of the relative competitive disadvantage imposed on Negroes by the past operation of a discriminatory system violates Title VII, just as the continued use of the discriminatory rules which created the differential would violate it. To eliminate this differential from the future operation of the system, the "rightful place" approach would allow an incumbent Negro to bid for openings in "white" jobs comparable to those held by whites of equal tenure, on the basis of his full length of service with the employer. If he met the existing ability requirements for such a job, he would be entitled to fill it, without regard to the seniority expectations of junior white employees.
>
> * * *
>
> .../T/he "rightful place" remedy seems best adapted to the achievement of the title's purpose. The title prohibits discrimination in all "terms, conditions, or privileges of employment," and thus clearly encompasses discriminatory seniority practices; its language discloses no intention to exclude from its protection the generation of Negroes who have worked under discriminatory systems. Moreover, a desire to eliminate the economic losses to the Negro and to the nation caused by racial discrimination in employment constituted a principal motive underlying the effort to pass Title VII. In the case of the Negro who already has a job, these losses result from discriminatory promotion, layoff, and wage practices. In particular, the continued maintenance of the unequal relative positions of white and Negroes established in the past will impose future economic losses on the Negro. To tolerate the imposition of such costs on incumbent Negroes would thus undermine a basic statutory policy. On the other hand, the "rightful place" remedy does not deprive white workers of the benefits of discrimination which have accrued to them in the past; they retain their present

> jobs and the economic gains resulting from past discrimination. All seniority systems in their ordinary operation "discriminate" within the unit in favor of older, long-term employees, and the white workers who stand to gain from this will continue to benefit. The "rightful place" theory would deprive them only of so much of their seniority expectations as depend on the continuation of a competitive differential based on racial considerations.

Note, Title VII Seniority Discrimination and the Incumbent Negro, 80 Harv. L. Rev. 1260, 1268, 1273-74 (1967).

It cannot be contended that the promotional procedures proposed by the plaintiff would constitute retroactive application of the Act. Plaintiff does not seek to displace white employees who have received jobs or promotions because of racial discrimination. Indeed, plaintiff does not seek to displace employees even where they received their jobs or promotions for discriminatory reasons after the effective date of the Act. Plaintiff only asks that discriminatory policies be terminated and that Negro employees be permitted to compete for future vacancies on a seniority basis that does not penalize them for their prior exclusion from these lines.

The adoption of a plant-wide seniority system would not deprive white employees of any "vested" rights. It has long been settled, even in situations in which seniority rights are not declared unlawful, that these rights are not vested property rights of an employee and can always be modified by the employer and union acting in good faith. See Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); Humphrey v. Moore, 375 U.S. 335 (1964); Elden v. New York, C.R.R., 152 F. 2d 361 (6th Cir. 1945); Gould, Employment Security, Seniority, and Race: The Role of Title VII of the Civil Rights Act of 1964, 13 Howard L. J. 15-7 (1967); Note, Title VII Seniority Discrimination and the Incumbent Negro, 80 Harv. L. R. 1260, 1263-64 (1967). White employees may have an expectation to secure promotions in their line of progression ahead of transferring Negro employees with greater plant-wide seniority, but this is an expectation of future additional benefits resulting from the past discriminatory policies. It is certainly not entitled to any recognition in a court of law.

This conclusion is confirmed by the single provision of the Civil Rights Act of 1964 that deals directly with seniority--Section 703(h), 42 U.S.C. Section 2000e-2(h). This clause provides that "it shall not be an unlawful employment practice for an employer to apply different terms, conditions, or privileges of employment pursuant to a *bona fide* seniority...system...*provided that such differences are not the result of an intention to discriminate because of race /or/ color*... " (emphasis supplied).

Clearly, the seniority system in effect at the Bogalusa Box Plant fails to pass either test. A system which perpetuates racial discrimination and which will continue in the future to deny promotion opportunities to Negroes with prior dates of employment, in favor of whites employed more recently, can scarcely be called "*bona fide*." And where the consequences of continuing the present restrictions on transfer and promotion in terms of the relative opportunities of Negro and white employees are as obvious as they are here, it can scarcely be contended that the differences are not "the result of an intention to discriminate." See Note, Title VII. Seniority Discrimination, and the Incumbent Negro, 80 Harv. L. Rev. 1250, 1270 (1967); Section V, *infra*.

## III. DEFENDANTS' PROCEDURES GOVERNING TRANSFERS WITHIN THE PLANT DISCRIMINATE AGAINST INCUMBENT NEGRO EMPLOYEES.

It is indisputable that Title VII would have been violated if, after Crown abandoned the formal racial restrictions on jobs, it had refused to permit incumbent Negro employees to transfer to white progression lines. This is true regardless of whether the no-transfer rule was adopted at the time the racial restrictions were abandoned or whether it was a long standing rule within the company. Crown would not be permitted by any procedure, regardless of its racial neutrality absent a history of segregation, to prevent incumbent Negro employees from competing for the desirable and attractive jobs from which they had been formerly excluded on racial grounds.

If this much is true, Title VII must also prohibit burdensome and unfair terms and conditions of transfer that effectively discourage, but do not formally prohibit, all movement of Negro employees into white progression lines. Crown's transfer procedures have precisely that effect. These procedures have operated to discourage all but a single Negro employee from transferring from a Negro to a white job in the three years after the racial restrictions were abandoned.

It is plaintiff's hypotheses that Title VII requires an employer who has maintained segregated progression lines, which remitted Negro employees to the lower level jobs in the plant, to permit these employees to transfer to white lines and compete for white jobs on terms that are fair and reasonable. What terms are available?

A. Wage Reduction

Incumbent Negro employees are permitted to transfer to vacancies in the Unassigned Groups 1, 3 and 6, which eventually lead to high paying positions in the Cutting, Rinishing and Miscellaneous Finishing Departments. Upon transfer, they are assigned to the bottom of the unassigned group and are paid at the entry rate (when work that far down the line is available), even though this rate is likely to be lower than the rate in their previous job. (Findings 52, 53). It is plain that this procedure effectively deters any Negro who has advanced past the minimum wage level of the white department from making the transfer. The economic deterrence is strengthened by the unsteady opportunities to work that exist at the bottom of an unassigned pool. The Negro employee contemplating transfer is faced with the Hobson's Choice, of either accepting a pay cut that he may well be unable to sustain, consistently with his economic responsibilities, or resigning himself to physically demanding, medium-to-low paying positions for the remainder of his career. Since white employees were permitted to progress through the entry level white jobs at an early age and permitted to steadily increase their income, this choice is one that they never had to make.

B. Loss of Seniority

If the wage reduction is not itself enough to discourage transfers by Negro employees, their treatment in the white line after transfer would certainly have this effect. As set forth in Section II, supra, a Negro employee who transfers to a white line of progression is treated, within that progression line, exactly like a new employee off the street. Regardless of the number of years of his service in the plant, he is denied all seniority and is ranked at the bottom of the new line.

> "With respect to incumbent Negro employees, who have, at least in part for racial reasons, been limited to the unskilled line, Title VII would appear to require that they be allowed to transfer to the skilled lines on a basis which would not force them to give up job security or income levels attained in the unskilled line. Such employees cannot be treated as equivalent to new applicants for skilled jobs coming in "off the street." They have, in the past, been limited and classified for racial reasons in a manner which deprived them of employment opportunities. As to them, the ban on interline transfers has operated to reinforce a policy of racial discrimination. To eliminate the transfer bar, but to leave in its place economic constraints which make transfer impracticable means that the use of what is, so far as incumbent Negroes are concerned, a racial classification, still tends to deprive them of opportunities and "adversely affect" their status as employees....The potential earnings loss could be met by "red circling" the Negro's

> present wage, if higher than the starting wage in the white unit, and paying him at that rate so long as it is greater than the normal rate for the job he is doing."

Note, Title VII, Seniority Discrimination and the Incumbent Negro, 80 Harv. L. Rev. 1260, 1278 (1967).

As for the potential loss in promotional rights, there is no need to fashion an independent remedy, since the adoption of a neutral plant-wide seniority system to correct the discrimination complained of in the preceding section will operate to eliminate this problem. However, the fact that the present promotional system is unlawful in its effect on transfer rights as well as on promotional rights is an additional reason for it to be struck down by the Court.

## IV. UNLAWFULNESS OF CROWN'S EMPLOYMENT TESTING PROGRAM

In the fall of 1963, Crown instituted, for the first time, the use of a battery of written personnel tests to screen all applicants for employment at its Box Plant in Bogalusa. A fixed set of passing scores was established. No person not attaining these scores was eligible for employment for any job in the plant, even the lowest level janitorial job. Although the test battery was varied on one occasion, this general procedure of giving the test battery to every applicant and using a single rigid set of passing scores was continued without interruption. (Findings 60, 69-71).

This testing program originally had no applicability to existing employees in the plant. However, in April, 1964, contemporaneously with the abandonment of racial restrictions on jobs in the plant, a transfer/promotion test requirement was instituted. With minor exceptions, all employees seeking transfer or promotion to a previously all-white line or job were required to pass the same battery of tests with the same scores as applicants.[*] This transfer/promotion testing requirement is not imposed at any of Crown's thirteen other box plants. (Findings 64, 71, 76-78).

Plaintiff attacks this testing program on two grounds.

First, as to the entire testing program (applicant as well as transfer/promotion): the battery of tests used, while not per se unlawful, violates Title VII in that it results in a disproportionate rejection of Negroes, without providing a valid measure of the skills required for the Box Plant jobs.

Second, as to the transfer/promotion requirement: The testing is per se unlawful as a special burden directed against Negro employees in the Box Plant.

### A. Unlawfulness of Entire Testing Program As Racially Discriminatory

Section 703(a)(1) of Title VII bars all discrimination in hiring or promoting employees because of race. This is the key provision of Title VII and it sets up the basic thrust and purpose of the Title-- to eliminate racial discrimination in employment situations no matter what form such discrimination takes. However, Section 703(h) goes on to say that it shall not be unlawful:

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[*] A test was not required for entry into the formerly all white watchman's job. (Finding 64). Additional exceptions to the general requirement of testing Negro employees prior to entry to white jobs later arose when two jobs in the plant, Paster Rod Man and Warehouse Spare Hand, were moved to new progression lines. These isolated exceptions do not alter the basic thrust of the testing requirement and, for convenience, they will be ignored for the balance of this discussion.

> "for an employer to give and act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race /or/ color . . ."

This case is the first to call for a judicial interpretation of this test clause in Section 703(h). This court must decide as a matter of first impression whether the clause is to be read as giving employers virtually carte blanche in using personnel tests-- as the defendants would read it-- or whether the clause is to be read in light of the basic antidiscriminatory purpose of Title VII and construed so as not to undercut that purpose-- as the plaintiff urges that it should be read.

Before getting to the interpretation of Section 703(h), however, it is important to understand precisely how and why Crown's personnel testing program violates the basic nondiscrimination requirements of Section 703(a).

The first element of this violation is that both the testing program as a whole and each separate test operates to screen out Negroes at a rate greatly in excess of the white rate. As Plaintiff's Exhibit 25A (Tabulation of Test Results at Crown Bogalusa Plants) shows in great detail, the percentage of whites passing the tests was four times as great as the percentage of Negroes passing. (Finding 80). This poorer performance by Negroes could have been anticipated by anyone familiar with testing since it is common knowledge that Negroes as a group score more poorly than whites as a group on such written tests. Moreover, the tests used by Crown (especially the Wonderlic and Bennett tests) are particular examples of tests on which Negroes score more poorly. (Finding 79(b)).

The second element of the violation is that the testing program, which is shown to exclude more Negroes than whites, does not measure the skills needed to perform the jobs in the Box Plant.

An employer obviously must use selection criteria in hiring employees. The soundness of such criteria is normally judged in light of business needs. For example, a company hiring taxi drivers may certainly require possession of a chauffeur's license as a criterion of employment, and the relative impact of this requirement on Negroes and whites would be irrelevant. On the other hand, criteria that operate to exclude members of a racial minority, but are not related to any valid business purpose cannot be tolerated. For example, if the same company determined to hire only persons who reside in a certain area of town and that area is predominantly white, the requirement is merely an indirect means of preferring whites over Negroes, because the requirement has this effect and there is no justification for it.* An employment testing program is no different. There are a wide variety of tests which attempt to measure a wide variety of skills. When an employer adopts a particular testing program which, like the predominantly white neighborhood hypothetical, has the effect of preferring whites over Negroes, that testing program is merely a subtle form of discrimination unless the tests are a reliable indication of performance on the job.

Professional psychologists recognize that a testing program must be judge in light of business needs in the particular situation. This is normally referred to as the "relevance" or "validity" of a test program in the particular situation. (Finding 81(a)). The concept is

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[*] This principle was applied by Judge Christenberry in Voglar v. Asbestos Workers (Local 53) (Civil Action No. 66-749 E. D. La. 1967), the only action under Title VII that has, as yet, been decided on the merits. There, Judge Christenberry enjoined the hiring policy of a traditionally all white union that limited new membership to persons who were related to members, recommended by members and approved by a majority vote of the membership. He found that each of these requirements "effectively denies to Negroes the opportunity to join the union without regard to race. He also found that the requirements were without legitimate business justification.

clearly explainted in Lawshe & Balma, Principles of Personnel Testing (2d ed. 1966):

> "From a psychological point of view... an area of concern surrounds cultural deprivation and the possibility of inadvertent racial discrimination. It is probable that many personnel tests, perhaps even most will distinguish between individuals with different types of cultural exposure or between individuals with varying degrees of cultural background. Tests of verbal skills in particular can be so characterized....
>
> "In the use of tests for employment, the fact that the average score of one race on a test is lower than the average for another race does not automatically imply racial discrimination. The relevance and validity of the test for the job in question are the critical factors. Are highly verbal tests used only when such verbal skills are required on the job? Does the validity study show the test capable of good prediction of job success? ...." /Emphasis added./

There is no dispute as to the points quoted above from Lawshe & Balma. Crown's own expert witness concurred with this quotation in general when it was read to him and specifically concurred that "the relevance and validity of the test for the job in question are the critical factors." (Finding 81(a) (Munger)). One of plaintiff's experts put it this way: "the question would be the extent to which /the/ tests are correlated with performance on the job." (Finding 81(a) (Docter)).

Thus, once it is established that the tests reject a disproportionate number of Negroes, the crucial question for the Court's examination is the relevance and validity of the tests. If this relevance and validity is not established, use of the tests constitutes racial discrimination in violation of the Act. (Finding 81(b)).

When then are the relevance and validity of Crown's test battery for the jobs in question? There are approximately 138 different jobs in the Bogalusa box plant, ranging from janitorial to complex machine operator. (Finding 83(c)). The test battery covers applicants for any and all of these jobs. There are approximately 110 different jobs in formerly all-white categories, ranging from simple helper and bundler jobs to complex machine operator jobs. Id. The test battery cover transfer/promotions to any and all of these jobs or lines of progression. Thus the full range of jobs in the plant is in question here.

1. There is no evidence at all that the tests have relevance or validity for lower and middle level jobs in the plant. The evidence is undisputed on this point. The Crown tests emphasize verbal abilities and an understanding of mechanical principles related to formal educational background. (Finding 79(b). All of the expert witnesses,

whether called by plaintiff or defendant, either agreed that the abilites were without relevance or validity for lower and middle level jobs or had no opinion on the question. (Finding 83(a)). There is no evidence in support of the validity of the test battery not only as it applies to the basic janitorial jobs but also as it applies to the lower and middle level jobs in the formerly all-white lines of progression. The only evidence introduced by Crown in support of the test program applies to the approximately ten top level jobs referred to in section 2, infra. (Findings 83(b), 85(b)).

This lack of validity for lower and middle level jobs is in itself a sufficient basis for declaring the entire test program unlawful since those jobs are jobs for which an individual is actually tested. There can be no direct entry to any of the jobs in the plant with which Crown's experts concerned themselves. However, Crown apparently defends the use of the tests for jobs for which they are concededly not valid on the ground that some of the employees in these jobs will someday be eligible for the top level jobs in the plant. The inadequacy of validity evidence for even these top level jobs will be demonstrated in the section which follows. However, even assuming that the tests are valid for these upper level jobs, such validity cannot be accepted as a basis for using the tests at lower levels. It is obvious from simple arithmetic that most employees will not attain the handful of top jobs which constitute only ten out of 138 jobs or approximately 8% of the jobs in the plant. The top of a pyramid is simply not as big as its base. Moreover, a substantial period of time will elapse before a person reaches such upper levels* during which time he will have had opportunity for on-the-job training and outside education and experience which may well alter his performance ability. (Finding 84). Even if it can be assumed that the test are valid for high level jobs and that employees who become eligible for these jobs will not acquire additional skills during the interim period, there can be no justification for excluding Negro employees from jobs for which they are qualified on the ground that there are other jobs in the plant for which they may not be qualified.

Crown apparently takes the position that, even if it would be better to test at a later point in time, they are forced to test "at the gate" because the union will not permit the use of testing later in the promotional line. This claim is totally without foundation. The union has already permitted the institution of tests some places in the promotional line-- i.e., the transfer/promotion testing being challenged in this case. There are also other in-line tests in the Shipping Department and in the Maintenance Department. (Finding 59). The fact of the matter is that the company did not even bother to ask the union if it could institute in-line tests in other places. (Finding 65). Moreover, even if the union's refusal were a stumbling block, the union is a co-defendant in this case. It hardly makes sense to say that a discriminatory practice is justified because a co-defendant has created a situation where it is necessary.

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* Plaintiff Hicks did not get an opportunity for promotion from his entry job in a line of progression for 12 years. (Finding 9).

2. There is no sufficient basis for judging that the tests have relevance or validity even for upper level jobs.-- Crown attempted to show that the tests had some validity for certain "skill" jobs, which category included only the top level jobs in the formerly all-white lines of progression.* However, this attempted showing was totally

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* Specifically, the category covered the following jobs: warehouse crane operator; slitterman; glue pan man, and operator jobs on both machines in the Corrugator group; slitterman, first helper and operator in Paster Group No. 1; operator in the printer-slotter and swift slotter groups; operators of machines in the finishing department; and operator of the post gluer machine. (Finding 85).

inadequate. With regard to certain of these "skill" jobs, even Crown's own experts did not entirely agree on the relevance and validity of the tests.*

As to the "skill" jobs for which there was no disagreement among Crown's experts, the testimony hardly showed much confidence. Neither expert could venture any judgment or estimate as to the extent of validity. (Finding 88). Dr. Ruch admitted that he could not even say whether the degree of validity would be greater than would be expected from mere random chance. (Finding 89). Dr. Munger indicated that there was a wide range of error in his judgment and that he could be "dead wrong". Deposition of Dr. Munger, p. 269/16 - p. 270/17. Both of Crown's experts said quite firmly that they would not recommend the battery of tests being used if they could make changes. (Finding 91).

Plaintiff's expert questioned the relevance and validity of the tests for any of the jobs in the plant.**

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* This lack of agreement appears to be true as to the operator of S & S automatic folder-taper in the finishing department and the job of post gluer operator. (Finding 86(a)).

** Specifically, Dr. Baxter doubted the validity of the tests for the printer-slotter operator job, slitterman job or the corrugator operator job. (Finding 86(b)).

In the case of one of the highest skilled jobs, that of corrugator operator, plaintiff's expert relied on an extensive empirical study conducted by the United States Employment Services. This study showed no significant validity for a test similar to one of Crown's tests when applied to this job. (Finding 87).

The reason for the disagreement among experts and their equivocation is clear. The Crown testing program was selected and passing scores were set by Crown employees who had no professional training or experience in the selection or use of personnel tests. These decisions were made without the consultation of any qualified persons in the field of personnel testing and without any meaningful study of the relevance or validity of the tests for any of the jobs in the Box Plant. (Findings 62-63, 66, 70). The expert witnesses called by Crown were forced to make judgments generalizing from other situations. (Finding 93). Dr. Ruch did not even see the plant in operation. Id. He based his judgment on observation at other plants and a standstill observation of the Bogalusa plant. Id. Dr. Munger observed the Bogalusa plant in operation, but he made no empirical study of the relevance of the tests. He rather judged that the tests would be valid because similar tests had been shown marginally valid on a white population for different jobs in petroleum refineries in Baton Rouge. (Findings 93-94).

Plaintiff's expert, Dr. James Kirkpatrick, when asked to comment on these judgmental predictions, rejected them as "a highly speculative affair". Kirkpatrick Dep., pp. 34/9 - 37/4. One researcher in the field has commented on the height of this speculation as follows:

> "A confirmed pessimist at best, even I was surprised at the variation in findings concerning a particular test applied to workers on a particular job. We certainly never expect the repitition of an investigation to give the same results as the original. But we never anticipated them to be worlds apart. Yet this appears to be the situation with test validities...
>
> ". . . We start off by making the best gusses we can as to which tests are most likely to predict success and are not at all surprised when we are completely wrong." Ghiselli, The Generalization of Validity, 12 Personnel Psychology 397-98, 400 (1959).*

The frequency of error in making judgmental predictions is simply too great to rely upon.

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* Specifically, Dr. Ghiselli found that correlations in 71 studies of general intelligence tests applied to general clerks ranged from -.40 to +.80; that 99 studies of spatial relations tests applied to machine tenders showed correlations ranging from -.55 to +.65; and that 105 studies of mechanical aptitude tests applied to mechanics showed correlations ranging from -.25 to +.65. Ghiselli, The Generalization of Validity, 12 Personnel Psychology 397, 398 (1959).

Moreover, the use of judgmental predictions in this case is particularly unreliable because the tests being used were developed and standardized on predominately white populations and judgments such as Dr. Munger's are based on studies conducted on all-white groups. (Findings 94, 98). The tested group in Bogalusa includes a significant percentage of Negroes. The risks raised in applying a white standardized and validated test to Negroes were discussed at length in Hobson v. Hansen, 269 F. Supp. 401, 477-88 (D. D. C. 1967), a case involving the use of testing in academic situations. One of the tests involved in this case was the Otis test which is similar to the Wonderlic test used by Crown. After analyzing the significance of the environmental factors and psychological factors the court concluded:

> "A crucial assumption /in evaluating aptitude test scores/ . . . is that the individual is fairly comparable with the norming group in terms of environmental background and psychological make-up; to the extent the individual is not comparable, the test score may reflect those differences rather than innate differences. . . .
>
> ". . . For this reason, standard aptitude tests are most precise and accurate in their measurements of innate ability when given to white middle class students.
>
> "When standard aptitude tests are given to low-income Negro children, or disadvantaged children, however, the tests are less precise and less accurate-- so much so that test

> scores become practically meaningless. Because of the impoverished circumstances that characterize the disadvantaged child, it is virtually impossible to tell whether the test score reflects lack of ability-- or simply lack of opportunity. . . ." 269 F. Supp. at 484-85. /Emphasis added/.

This finding has very recently been confirmed in an industrial context in recent studies, notably an extensive two-year study conducted by Dr. James Kirkpatrick (and others) under the auspices of the Ford Foundation. (Finding 100(b)). These studies show quite clearly that the correlation between test scores and job performance for Negroes is normally significantly different from the correlation for whites. (Finding 101(a)). In other words, Negroes in some cases performed just as well or better than whites on jobs and yet scored lower than whites on the selection test. (Finding 101(b)). In some cases the reverse was true. Id.

Crown's experts were unaware of these studies in making their judgments and made no attempt to compensate for the inclusion of Negroes in the tested group or even to determine whether the inclusion of Negroes was a significant factor. (Findings 102-03). Dr. Munger conceded that if he were aware of studies showing different correlations for whites and for Negroes-- such as Dr. Kirkpatrick's studies-- his judgment might be altered. (Finding 104).

A final defect in Crown's reliance on unverified judgments in establishing its test program is in the matter of setting passing scores. The choice of a passing score is of great importance since the relative percentage of Negroes and whites passing varies at each score level. (Finding 105). As the score level changes, the correlation between test score and job performance may well shift and may even go from a positive correlation to a negative correlation. (Finding 106(a)). For example, in using a test to select assembly line workers, it may well be that low scorers will be insufficiently skilled to do well, and that high scorers will be too bright and will perform poorly because of boredom. Only the middle range might be good performers. The proper score level, if one exists, cannot be known without an empirical study. (Finding 106(b)). Because of the lack of such a study, even Crown's own experts were unwilling to vouch for the soundness of the score levels used by Crown. (Finding 107).

For all these reasons, it is universally recognized in the psychological profession that the only professionally sound way to determine whether a particular test battery is relevant and valid for particular jobs is to do an empirical study of the correlation between scores on the tests and performance on the jobs, either in the employer's own plant or in another plant with (a) a closely similar job and (b) a similar population. This is known as a validity study. (Findings 92, 96). See Cronbach, Essentials of Psychological Testing 96, 105, 119 (2d ed. 1960); Tiffin & McCormick, Industrial Psychology 119, 124-25 (5th ed. 1965); Giselli & Brown, Personnel and Industrial Psychology 187-88, 210 (1955); Mandell, The Selection Process 290 (1964); Ruch, Psychology and Life 67, 456-57 (5th ed. 1958); Siegel, Industrial Psychology 122 (1962); Thorndike, Personnel Selection Tests and Measurement Techniques 5-6 (1949); Freeman, Theory and Practice of Psychological Testing 88 (3d ed. 1962); Lawshe & Balma, Principles of Personnel Testing (2d ed. 1966). No authority other than the personal opinions of Crown's experts-- both of whom are in the business of selling tests to industry-- has been cited in support of any lesser standard of validation. (Finding 114).

Yet it is conceded that the Crown test program has not been validated in such an empirical study or in accordance with any other professional validation standards, either before or after it was adopted. The tests were adopted by Crown with its eyes studiously averted from the validity of the test requirement, or its impact on equal employment practices in Bogalusa. (Finding 97). The nearest thing to a proper validation study for any of the jobs involved in the Crown Box Plant introduced in evidence in this case was the United States Employment Service study of the corrugator operator job, which was introduced by plaintiff in connection with the testimony of Dr. Baxter. This was an empirical study and it involved a job almost identical to that in the Crown Box Plant (although the test population may have varied somewhat from that in Bogalusa). This study showed no significant validity even for that single position. (Finding 87).

The use of a testing program without properly verifying its relevance or validity has been uniformly declared improper whenever challenged before any independent agency or arbitrator.

The Equal Employment Commission has found the use of tests unlawful where:

> "the tests have /not/ been validated properly in terms of the specific jobs available at Respondent's plant, or in terms of the racial composition of Respondent's work force. In the absence of evidence that the tests are properly related to the jobs and have been properly validated, Respondent has no rational basis for believing that

> employees and applicants who pass the test will make more successful employees than those who fail."
> Commission Decision, Dec. 2, 1966, in CCH Employment Practices Guide, para. 17,304.53.

The Commission has published extensive Guidelines on Employment Testing Procedures which call for empirical validation and validation for minority groups. Plaintiff's Exhibit 23, at par. I(e), (f); (Finding 108(b)). This interpretation of Title VII by the administrative agency charged with enforcing the law is entitled to the greatest of weight because the agency has the greatest familiarity with the background and purpose of the law and can best appreciate the overall impact of any interpretation. See International Chem. Workers v. Planters Mfg. Co., 259 F. Supp. 365, 366-67 (N.D. Miss. 1966); Edwards' Lessee v. Darby, 25 U.S. (12 Wheat.) 206, 210 (1827); Norwegian Nitrogen Prods. Co. v. United States, 288 U.S. 294, 315 (1933); 1 Davis, Administrative Law Treatise, Sec. 5.06 (1959) and cases cited. The Federal Office of Contract Compliance is working on draft guidelines which require similar validation. (PX 32; Finding 108(a)). On numerous occasion in labor arbitration situations, arbitrators have been called upon to rule on the suitability of testing programs instituted by employers. These arbitrators have repeatedly ruled that tests must be empirically validated before they will be considered suitable. The ruling in National Cooperative Refining Association, 44 Lab. Arb. 93 (1964), is typical:

> "The suitability of a particular objective test for screening candidates for an occupation, or that any particular score on a test is indicative of a lack of qualities requisite in that occupation cannot be assumed. It must be determined by experimentation . . . Without such a basis of experience . . . the significance of the test results are speculative at best, and the use of any particular score as critical is indefensible." 44 Lab. Arb. at 95.

See, e.g., Latrobe Steel Co., 34 Lab. Arb. 37, 38 (1960); Southern Standard Bag Corp., 66-1 Lab. Arbit. Awards, Par. 8306, at 4050-51 (1966).

Requiring proper empirical validity studies is not the imposition of a burden on business solely to protect Negroes. It protects whites and other groups as well and, more important, it assures an employer of the best possible employee selection program. Crown's own experts conceded the desirability of an empirical validation and said that they recommend such validation in establishing a testing program. (Finding 111).

Lesser standards may have been prevelant when an employer was free to do whatever he considered was expedient without regard to its effects on minority groups. But the enactment of Title VII bars the use of employment criteria, which have not been shown to be based on business needs, and have the effect of discriminating against Negroes as a group. Many companies-- for example, Olin Mathieson Chemical Corporation, American Telephone and Telegraph, Sears and Roebuck-- have recognized the need for proper validation including minority groups and have undertaken the necessary studies. (Finding 109). Other companies have undertaken bi-racial validation studies in cooperative ventures through trade associations. (Finding 110). If there is an honest desire to properly validate, procedures are available to do it. The totally unvalidated Crown testing program is a blatant example of a highly discriminatory criterion which mocks Title VII and should be struck down.

3. Section 703(h) offers no basis for upholding the Crown testing program. Given the disproportionate rejection of Negroes by the Crown test program and the lack of evidence as to its relevance and validity, the program clearly violates the basic principles of Section 703(a). Does the special language in Section 703(h) regarding "professionally developed ability" tests somehow rescue the Crown program from condemnation? It would

be shocking indeed if Section 703(h) could be read to have this result, and an analysis of the section shows that it was never intended to have any such effect. Section 703(h) offers no support at all for the Crown program.

(a) Legislative history of Section 703(h). The test clause in Section 703(h) was introduced by Senator John Tower as an express response to a decision of a hearing examiner under the Illinois Fair Employment Practices Act in a case involving the Motorola Corporation. 110 Cong. Rec. 9024-42 (1964). This decision, handed down while Title VII was on its way through Congress, indicated that the use of an ability test might be unlawful per se because Negroes as a group scored more poorly on it than did whites as a group. Decision and Order of FEPC Hearing Examiner, reprinted in 110 Cong. Rec. 9030-9033 (1964). This is obviously not the theory being advanced by plaintiff before this court because it ignored the question of relevance and validity. As Senator Tower correctly pointed out, this ruling established a "double standard" and might require the hiring of Negroes who were less qualified for a job than whites. He therefore introduced an extensive amendment to Title VII which he explained as "not an effort to weaken the bill" but rather to protect the right of an employer to assess an applicant's "job qualifications." 110 Cong. Rec. 13492 (1964). Senator Tower made it clear that his amendment "would not legalize discriminatory tests." Cong. Rec. 13504. The sponsors of Title VII were of the view that the bill as it stood already protected employers against a decision such as _Motorola_ because of differences between Title VII and the Illinois law. Moreover, they objected to Senator Tower's amendment because it gave an employer an absolute right to use a professionally designed test even if it operated discriminatorily. Remarks of Senators Case and Humphrey, 110 Cong. Rec. 13503-04. For these reasons, Senator Tower's extensive amendment was rejected by the Senate. 110 Cong. Rec. 13505. Subsequently, Senator Tower introduced a much abbreviated and watered-down version of his amendment. This version had been cleared with "the Attorney General, the leadership, and the proponents of the bill." 110 Cong. Rec. 13724. Senator Humphrey, a sponsor of the bill, said that:

> "Senators on both sides of the aisle who were deeply interested in Title VII have examined the text of this amendment and have found it to be _in accord with the intent and purpose of that title_." _Id._ /Emphasis added./

The amendment passed on voice vote without debate and is now included in Section 703(h).

This legislative history shows quite clearly that the purpose of the Tower amendment was not to exempt ability tests from the Act's broad prohibition of discriminatory practices, but rather only as insurance that the extreme implications of the Motorola decision did not creep into interpretation of Title VII. The Tower amendment was approved only when everyone was assured that it was consistent with the "intent and purpose" of Title VII. It must therefore be construed consistently with that intent and purpose. This purpose was surely not to allow testing programs like Crown's.

(b) Crown tests are not "professionally developed." The wording of the Tower amendment provides further proof that the amendment offers no support for Crown's testing program. The amendment covers only the right of an employer

> "to give and to act upon the results of any professionally developed ability test" /Emphasis added/.

Crown would apparently read this phrase to mean that any test developed by professionals at its inception could be administered in any employment situation. This reading would permit, for example, the use of a typing test to select ditch diggers or the use of the College Boards to select janitors. The difficulty with this position is that it assumes that tests are developed in a process carried on in the abstract without regard to particular uses and purposes. But as Dr. Docter testified:

> "the phrase says 'professionally developed test,' and the fact that a test may have had a very appropriate standardization at some point in time, does not render it a suitable test at some other point in time. So that what is required, in my view, would be qualification and understanding of the term 'developed,' you see, to incorporate the whole process of tests, development and application, because they are one and the same . . ." (Tr. 329, 1.18-24).

Tests are developed for certain applications. Unless the application of a test conforms to professional standards, it is nonsense to say that the test is still "professionally developed," particularly when it would open the door to employers to shop around for tests on which Negroes score most poorly without regard to the relevance or validity of these tests in the employers' context.

Dr. Docter's interpretation of "professionally developed" is shared by the Equal Employment Opportunity Commission, which has stated in its Guidlines (Plaintiff's Exhibit 23):

> "The Commission accordingly interprets 'professionally developed ability test' to mean a test which fairly measures

> the knowledge and skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular class of jobs. The fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII." /Emphasis added./

Viewing "professionally developed" in this light it is plain that Crown tests do not meet the standard. The tests were adopted on the basis of recommendations from Crown employees who are totally lacking in professional training regarding tests. (Findings 62-63, 66, 70). No professional psychologist or test person was consulted regarding the test selection or the setting of scores. (Id). The tests were developed and standardized on predominantly white populations. (Finding 70). Those professional psychologists who have been consulted since in connection with the preparation of defendants' case have said that they would not recommend Crown's test battery if called in fresh. (Finding 91). Plaintiff's expert rendered his opinion, in the absence of any validation studies, that the testing program is probably invalid for all the Box Plant jobs. (Finding 86(b)). But, most important, there has been no validation of the tests in accordance with professional standards. (Finding 97).

(c) Crown tests are "designed, intended, or used to discriminate." The Tower amendment does not authorize the use of even professionally developed test under all circumstances. It is also necessary that:

> "such test, its administration or action upon the results is not designed, intended or used to discriminate because of race [or] color. . . ."

In considering whether the Crown tests violated this clause, the notion must be firmly dispelled that the discriminatory nature of these tests comes as a surprise to Crown. It is common knowledge that Negroes as a group perform more poorly on such tests than do whites as a group, and that the tests therefore raise a possibility of discrimination if not valid. (Finding 79(b). The tests used in the Crown battery, especially the Wonderlic and Bennett tests, are particular examples of tests on which Negroes score more poorly. Id. Various charges filed with the Equal Employment Opportunity Commission, including the intial charge filed by plaintiff Hicks on November 16, 1965 (DX 17) took express issue with the discriminatory nature of Crown's testing program. The company was enough aware of the problem to conduct a study in June - July 1966 of the scoring of Negroes compared to "Other Races" on the tests. This study showed that the Negroes were scoring lower and passing at a lesser rate than whites. (Finding 112). Crown's Vice-President in charge of box plants, Ernest A. Mitchell, expressly conceded that he knew that Negroes performed less well than whites on tests of this kind. He testified, however, in response to questions from the Court that his company's interest in "plans for progress" did not extend to the correction of the discriminatory test situation in Bogalusa. (Finding 113).

Thus this case does not deal with an isolated case of unknowing or accidental discrimination. It deals with a problem of discrimination that was caused by the conscious and purposeful institution of a battery of tests. It was continued for a period of three and a half years without any attempt at corrective action or at investigating the seriousness of the problem despite repeated events which brought the problem to the company's attention. Even now the company has not shown any interest in studying the relevance or validity of the tests. Crown studied the test scores in June - July, 1966 and found Negroes passing at a lower rate. They have not shown any interest in studying anything else since. They want to use the tests as is despite the contrary recommendations of even their own expert witnesses.

Parts A(1) and A(2) of this section make it clear beyond dispute that "action upon the results /of Crown's test battery/ is . . . used to discriminate because of race." Moreover, it must be understood that "intended" in this context does not refer to a subjective motive, but rather to an objective standard based on the concept that a person must be held to intend the normal and foreseeable consequences of his actions. The Equal Employment Opportunity Commission has so ruled. Commission Decision, December 6, 1966, in CCH Employment Practices Guide, Par. 17.304.55. Under this concept, Crown must be held to have intended the discrimination which flows from its test program.*

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The problem of discrimination in the use of psychological tests is highly technical and complex. It is precisely the kind of matter on which the opportunity of an agency such as the Equal Employment Opportunity Commission to make a careful and deliberate study and prescribe interpretative guidelines is most essential to the sound development of the law. The agency's guidelines can be modified from time to time to conform to refinements in professional practice and the needs of industry.

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*The meaning of "intent" in Title VII is discussed at length at pp. 68-71, *infra*.

The wisdom of deferring to the expertise of an administrative agency is most appropriate in this complex area. Under the Guidelines of the EEOC, Crown's testing program is patently invalid.

B. Per Se Invalidity of Transfer/Promotion Testing

The test requirement for transfers was instituted by Crown only in Bogalusa. It does not apply at any of the company's other box plants. It was instituted just when racial restrictions on transfers were abandoned. In order to understand the invidious purpose and effect of Crown's institution of the transfer/promotion testing requirement in April, 1964, it is necessary to understand the operation of the requirement. It is applied only to persons seeking initial entry into one of the formerly all-white jobs or lines of progression. This has little effect on the promotional rights of white employees already in the plant as of April, 1964. Most of these whites were in better lines of progression and are free to retain their jobs and move from the low level entry jobs in a progression line all the way to top level machine operator jobs without ever seeing a test. (Finding 64). Whites who were not in lines of progression at that time had had ample opportunity to transfer into white lines free of any test, and by choosing not to do so had indicated a desire to remain in their present jobs. Nor does it affect the rights of any new employees entering the plant after the fall of 1963. These new employees were given the tests on initial application and thus need not fulfill the redundant transfer/promotion test requirement. This leaves only one group of persons whose rights are substantially affected-- the Negro employees in the plant as of April, 1964.

It is difficult to imagine a clearer example of the imposition of a racially discriminatory term of employment. If the company had said in April, 1964, that henceforth any present Negro employee wishing to get a top-level job would have to pass a special test but that present white employees were exempted from the test, we would have had rank and open discrimination. The company has not done that. Rather it has defined a class which just happens to consist essentially of Negro employees as of April, 1964, and has set up a special test for them alone. The effect is to erect a subtle special test barrier as a substitute for the naked racial barrier that prevented Negroes from moving to the better progression lines until April, 1964. As a result of this test barrier only one Negro who was employed as of April, 1964 when the tests for transfers were instituted has been able to transfer to a white job in the following three years. (Finding 58).

This tactic of replacing naked discrimination with more subtle discriminatory barriers which purport to be color blind has obvious parallels in other civil rights contexts. A recent example of this tactic in the voting rights area was described in United States v. Dogan, 314 F. 2d 767 (5th Cir. 1963). The defendant, a sheriff, issued instructions that any person coming in to pay a poll tax for the first time, "black or white," be required to see him personally. The court found that substantially all of the eligible whites had previously been permitted to pay the poll tax and that not one of the eligible Negroes had done so, and drew this conclusion:

> "Obviously a blanket requirement that all persons who have never paid the poll tax before, that being a relatively small percentage of white people and all Negroes, who now desire to pay their poll taxes for the first time must see the Sheriff personally operates unequally and discriminatorily against the Negroes." 314 F. 2d at 772 (5th Cir. 1963).

This same principle has been recognized in many other situations. See Lane v. Wilson, 307 U.S. 268 (1939) (voting rights); Guinn v. United States, 238 U.S. 347 (1915) (voting rights); Ross v. Dyer, 312 F. 2d 191 (5th Cir. 1963) (school desegregation).

The point is clear. An employer is not prevented from instituting all new tests or other promotional standards merely because he discriminated in the past. An employer is, however, barred from instituting a new test or promotional standard which in its operation imposes a greater burden on Negroes who were previously discriminated against and exempts their white contemporaries who, because they were free from discrimination, were able to precede the Negroes up the promotional ladder. The choice of the employer is to test all his employees, or permit incumbent Negro employees to compete for white jobs on the same basis as did white incumbents. To permit any new barrier to be constructed applicable primarily to Negro employees would be to permit an employer to continue his past discrimination indefinitely.

## V. INTENTIONAL NATURE OF VIOLATIONS

Under Section 706(g) of Title VII, the court is authorized to enjoin any unlawful employment practice which defendant "has intentionally engaged in or is intentionally engaging in." The legislative history and common meaning of "intentionally" abundantly demonstrate that defendants conduct with respect to all the violations described in the preceding pages is intentional within the meaning of Title VII.

As originally drafted Title VII contained no such intent requirement. The absence of such a requirement was disturbing to some, and Senator Dirksen therefore introduced an amendment inserting the word "willfully" so that the law would call for a finding that a defendant "has willfully engaged in or is willfully engaging in" an unlawful act. H.R. 7152, Amend. 507, 88th Cong., 2d Sess. (1964). Senator Dirksen explained that "willfully . . . means nothing more than that the person, of whose actions of default the expressions are used, knows what he is doing, intends what he is doing, and is a free agent." 110 Cong. Rec. 8194 (1964). Senator Dirksen also said that the term was "employed to denote an intentional act, an act done intentionally, or purposely, as distinguished from an accidental act." Id. He also pointed out that "in civil cases" the term "willfully" is "frequently used in a sense that does not imply any malice or wrong, or anything necessarily blamable or malevolent." Id.

The courts have given alternative constructions to "willfully." In United States v. Murdock, the Supreme Court noted.

> "The word often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal statute it generally means an act done with bad purpose." 290 U.S. 389, 394 (1933).

In McBride v. United States, 225 F. 2d 249 (5th Cir. 1955), the Fifth Circuit went on to point that even in criminal statutes, the term "willfully" does not normally mean with bad purpose, and that this bad purpose test applied only in a few cases. Id. at 254. The Fifth Circuit then cited and quoted with approval Judge Learned Hand's definition in American Surety v. Sullivan, 7 F. 2d 605, 606 (2d Cir. 1925):

> "The word 'wilful,' even in criminal statutes means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law." Quoted in 225 F. 2d at 254.

Under this line of authority, the courts would most likely have construed the term "willfully" in Title VII as meaning deliberate or voluntary as distinguished from accidental. However, as the cases cited above note, the term has sometimes been construed in criminal statutes to include an element of motive. Probably because of this uncertainty whether "willfully" was to include an element of motive, Senator Dirksen (along with Senators Mansfield, Humphrey and Kuchel) dropped the amendment using the term "willfully" and substituted one inserting the term "intentionally." H.R. 7152, Amend. 656, Section 706(g), 88th Cong., 2d Sess. (1964). This version was subsequently enacted. Since it is "settled that 'willfully' means more than 'intentionally' . . .," Wardlaw v. United States, 203 F. 2d 884, 885 (5th Cir. 1953), the substitution of the term "intentionally" resolved any doubt that no element or motive or bad purpose was to be included.

The only question to be asked in determining whether violations of Title VII are intentional is: Were the acts complained of committed voluntarily as distinguished from accidentally? The defendant need not "suppose that he is breaking the law." It is clear that the acts of defendants complained of in this case were and are voluntary, deliberate and persistent. The acts began in 1963 or 1964 and were continued for several years despite repeated warnings of the illegality of the actions. The defendants not only engaged in deliberate acts, they were also fully cognizant of the effect of their acts. "It has been reiterated time and time again that a person is presumed to intend the natural and probable consequences of his acts. . . ." Dunlap v. United States, 70 F. 2d 35, 37 (7th Cir. 1934). Defendants, with their long history of naked segregation and discrimination in everything from job assignments to locker facilities and their continuation to this day of segregated local unions, can hardly be heard to say that these violations are all an accident.

## VI. RELIEF

Although it is likely that the parties will be asked to submit proposed decrees after a decision on the merits, it may be appropriate at this time for plaintiffs to summarize the relief they believe necessary to remedy the violations described herein.

Section I. The violation of law described in Section I, dealing with the maintenance of separate lines of progression for formerly all-white and formerly all-Negro jobs in the Corrugator, Paster and Trucking Departments, can be remedied by ordering the defendants to merge the lines of progression in the Corrugator Department, by placing the Corrugator Rod and Take Off Group immediately beneath the Corrugator Group in one consecutive line of progression; by ordering the defendants to merge the lines of progression in the Paster Department, by placing Paster Group #2 immediately beneath Paster Group #1 in one consecutive line of progression; and by ordering the defendants to construct a line of progression between the service job and the driver job in the Trucking Department.

Section II. The violation of law described in Section II, dealing with movement upward by Negro employees after entry into a formerly all-white line of progression, can be remedied by ordering the defendants to fill all vacancies in formerly all-white lines on the basis of plant wide seniority of all the employees in the line, rather than on the basis of job or group seniority. A Negro employee within a line who, on the basis of his plant wide seniority, is the senior eligible bidder for a promotion and would be capable of properly performing the job in question, with the usual on the job training, should be permitted to fill the vacancy, even when it involves bypassing jobs within the line of progression. Only in situations in which the company can show that experience in a particular job is essential to proper functioning in the next higher job should promotion be limited to step by step movements.

Section III. The violation of law described in Section III, dealing with unlawful conditions on transfer by Negroes to formerly all-white lines of progression, can be remedied by ordering the relief specified in the preceding paragraph and ordering Crown to compensate a Negro employee who transfers to the entry position in formerly all-white line of progression at his average weekly earnings in the position he left, until such time as his average weekly earnings in the white progression line exceed the average weekly earnings in the position he left, or until such time as the employee refuses promotion.

Section IV.A. The violation of law described in Section IV.A, dealing with the discriminatory use of a particular test battery for applicants and for transfer/promotion purposes, can be remedied by declaring the test battery most recently used to be unlawful because there is no sufficient evidence of validity for it, and by enjoining the further use of this test battery or any other tests without proper validation in accordance with generally accepted professional standards which the court considers to be fair and reasonable to minority groups. It should be made clear that, at the minimum, such validation must be based on an empirical study of the correlation between scores on the tests and performance on particular jobs or classes of jobs, either in Crown's own plant or in another plant with a closely similar job or class of jobs and a similar population.

It would not seem appropriate for the court to spell out these professional standards in great detail since there are variations in validation techniques and since ongoing research in the field is constantly refining and improving those techniques. Changes in accepted validation procedures may be particularly expected within the near future because of recent research on differences in validity of tests for minority groups. It would therefore seem most sound for the court to maintain jurisdiction over the case and require that any future test use be approved by it after review and approval of the validation procedures followed.

In order to bring maximum clarity to this area and certainty to the minds of employers, it would seem appropriate for the court to make specific reference to the Guidelines on Employment Testing of the Equal Employment Opportunity Commission and indicate that those guidelines are found to be a reasonable interpretation of Title VII, with the caveat that changes in the Guidelines may well be appropriate as further research reveals the need for refinement in test validation procedures.

Section IV.B. The violation of law described in section IV. B, dealing with the discriminatory institution of transfer/promotion testing can be remedied only by declaring such testing unlawful and enjoining the use of such tests or the establishment of any other standards or qualifications which will make it more difficult for Negroes employed as of April, 1964, to reach top level jobs than it is for whites employed at the same time.

In addition, plaintiffs seek to be awarded the costs of this action, including a reasonable attorney's fee, as specifically authorized by Section 706(k) of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e-5(k).

## CONCLUSION

For the reasons specified herein, plaintiffs urge that this Court declare the practices of the defendants challenged in this proceeding to be in violation of Section 703(a) of the Civil Rights Act of 1964, and that this Court order appropriate affirmative relief to remedy these violations.

Respectfully Submitted,

RICHARD B. SOBOL
2209 Dryades Street
New Orleans, Louisiana

GEORGE COOPER
435 West 116th Street
New York, New York

LOLIS E. ELIE
COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

Of Counsel:

ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi

By: Richard B. Sobol

Attorneys for Plaintiff
Robert Hicks and Plaintiff-
Intervenors A.Z. Young and
Elmer Rogers

Dated: September 22, 1967

CERTIFICATE

A copy of Plaintiffs' Memorandum of Law was, this 22nd day of September 1967, delivered by hand to Mr. Michael J. Molony, Jr., 28th Floor, 225 Baronne Street, New Orleans, Louisiana, attorney for defendant Crown Zellerbach Corporation, and mailed, first class postage prepaid, to Mr. James E. Youngdahl, 711 West Third Street, Little Rock, Arkansas (Air Mail) and to Mr. C. Paul Barker, Suite 711, Carondolet Building, New Orleans, Louisiana, attorneys for the defendant unions.

Richard B. Sobol

RICHARD B. SOBOL
Attorney for Plaintiffs

new file
Hicks v.
Crown
Zellerbach

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOUIS E. ELIE

TELEPHONE
523-5197

September 2, 1966

Mr. Carl Rachlin
General Counsel
Scholarship, Education and Defense Fund
for Racial Equality

Dear Carl,

Bob and I are working on the conference for the weekend of September 23; we are hopeful of being able to get a fair cross section of the community including people from our chapter of ACLU and some teachers from the universities.

I have enclosed a copy of our petition in the Crown Zellerbach suit and would urge you to discuss this matter with Jerimiah Gutman who is very familiar with every facet. No trial date has been set anyway we are not eager to get a trial because we feel that our position is not strong and furthermore we are hopeful that J. D. will see fit to intervene.

Sincerely,

COLLINS, DOUGLAS & ELIE

Lolis

LOLIS E. ELIE

LEE:vl

Enc:

CROWN ZELLERBACH CORPORATION
1 Bush Street
San Francisco 19, Calif.

**OFFICERS:**

R. O. Hunt, Chairman
H. L. Zellerbach, Chairman of Executive Committee
P. T. Sinclair, President
F. O. Boylon Senior Vice-President, Manufacturing
C. S. Cullenbine Senior Vice President, Administration
J. B. Gilbert , Senior Vice-president, Marketing
D. J. Benjamin, Senior Vice president, Containers Packaging
O. D. Hallin, Seniro Vice president, Timber
R. T. Kimberlin, Vice Presidnet, Secretary and Treasurer
G. S. Runyan, Vice President, Marketing
W. M. Hearon, Vice President, Research
V. E. McIntyre, Vice President, Newsprint and Printing Paper
R. L. Appling, Vice President, Marketing & Sales
F. G. Armstrong, Vice President, Industrial Relations
F. M. Barnes, Vice president, Administation
M. A. Barr, Vice president
Western-Waxide Division
Joseph Blumlein, vice president, Distributor and Chain Store Sales
L. W. Gould, Vice President, N. Y. Corporate Representative
E. A. Mitchell, Vice President, Gaylord Division
E. P. Partland, Vice president, Int'l and Export Sales
H. E. Nylund, Controller

**DIRECTORS**, with other directorates:

R. O. Hunt
Res: 2518 Pacific Avenue, San Francisco 15, Calif.
Director:
Pacific National Bank, 900 Second Ave., Seattle 11, Wash.
Crocker-Citizens National Bank, 1 Montgomery St., San Fran.
General Reinsruance Co., 400 Park Ave., New York 22, N. Y.
Canadian Imperial Bank of Commerce, 25 King St. Toronto
Union Oil Co., Union Oil Center, Los Angeles 17, Calif.
Zellerbach Paper Co., 343 Sansome St. San Francisco
Woodland Savings & Loan Co., Calif.
St. Francisville Paper Co., St. Francisville, La.
(President and Director)
San Fernando Laboratories, San Francisco, Cal.
Trustee-Pacific University
Other details: Age 61, started career as mate and master of ships in Puget sound; entered CZ as accountant and office manager, then up through manufacturing end.

H. L. Zellerbach
Res: 2288 Broadway, San Francisco 15, Calif.
Director:
Pacific National Bank of San Francisco, 333 Montgomery St. San Francisco.
Joseph Magnin, Inc., 77 O'Farrell St. San Francisco

H. L. Zellerbach(cont)
Niantic Corp.,
Newhouse Foundation (Pres.)
San Francisco Art Institute
San Francisco Ballet Guild
Trustee:
Unicersity of Pennsylvania, Philadelphia, Penn.
Other: Age 71, trained as economist, started with co as personnel direcrot 1917; son William Joseph is pres. of subsidiary Zellerbach paper co.

D. J. Benjamin

Officer of company
No other directorates listed.
Residence: 3095 Pacific Ave., San Francisco 15, California

Wallis B. Dunckel

Res: 200 East 66th St., New York 21, New York
Pres. and Dir: Bankers Trust Co, 280 Park Ave., NYC
Director: American Bank Note Co, 70 Broad St. NYC
Lincoln National Life Insurance Co.,
1301 S. Harrison St., Ft. Wayne, Indiana
Trinity School (Prep school in NY where he went)
Other: Yale, 1922, age 64.

Peter Thomas Sinclair
Pres. of Co.
Director: Wells Fargo Bank, 464 California St. San Francisco
St. Francisville Paper Co. (50% owned subsidiary)
National Association of Manufacturers
Other: Age 56, trained as electrical engineer.
Residence: 2000 Jackson St. San Francisco 9, Calif.

Arthur H. Dean
Lawyer, diplomat, partner Sullivan & Cromwell, 48 Wall St., New York 5, New York
Residence: Mill River Road, Oyster Bay, New York
Director: American Bank Note Co., 40 Broad St. NYC 4
Lazard Fund, Inc., 44 Wall St., New York 5, N. Y.
El Paso Natural Gas Co., Texas St. El Paso, Tex.
Cornell Aeronautical Lab., 4455 Genesee St., Buffalo 21, New York
Campbell Sout Co., 375 Memorial Ave., Camden 1, New Jersey
National Union Electric Corp., Stamford, Conn.
American Metal Climax Inc. 1270 Ave of the Americas, N.Y.
American Agricultural Chemical Co, 100 Church St. N. Y,
Trustee: Bank of New York, 48 Wall St., New York 15, N.Y.
Carnegie Foundation, 589 Fifth Avenue, New York City

Other: special Ambassador to Korea, 1953-1954: Delegate to 16th, 17th General Assemblies of United Nations; Chm. of U. S. delegation to Geneval Conference on Discontin of Nuclear Weapons Tests, 1961 and 18-nation Disarm. Conf. 1962, 1963 Officer in lots of legal societies, dir. American Economic Association, etc.

F. O. Boylon

Officer of Company, no other directorships listed.

C. S. Cullenbine
Officer of company, no other directorships listed
He's a lawyer who was formerly with Gaylord Container.
Pres of board of governors of John Burroughs School(probably in San Francisco area somewhere can find address if you need it) also a director of American Arbitration Association(which is a possible approach. They are supposed to have only high-minded, upstanding citizens.)
Res. 2110 Redington Rd., Hillsborough, Calif.

John B. Gilbert
Res: 50 Hacienda Circle, Orinda, Calif.
Also director of subsidiary Zellerbach Paper, CZ subsidiary, and came up through sales and there.

Otis D. Hallin
Officer of company, no other directorships listed.

D. S. Denman

Res. Kentfield, Cal.
Retired senior VP , age 70. was in charge of timber.

Alfred B. Layton
Res: Diablo, Calif.
Dir. Bank of California, San Francisco, Calfi.
Western Pacific Railroad, San Francisco. Calif.
Chm. Board of Trustees, John Muir Memorial Hospital
(San Francisco?) Can find out) Age 63

Richard A. McDonald
Res: 1038 Ashmount Ave., Oakland 10, Calif, Age 78
Chm exec committee, East Texas pulp & Paper Co.
He was head of Western Waxed Paper before it was absorbed by Crown Zellerbach.

Milton C. Mumford
Res 514 Hollow Tree Ridge Rd. Darien, Conn
President of Lever Bros, Co. age 62. Was with Marshall Field in Chicago for 20 years, lived in Chicago and in 1947-1948 was housing and Redevelopment Coordinator for city of Chicago, Lever Bros. is 390 Park Ace. NYC
Director: Equitable Life Assurance, 1285 Ave. of the American
New York Educational Facilities Laboratories, 477 Maidosn Ave. New York City.
Nutrition Foundation, 99 Park Avenue New York
Trustee; Consolidated Edison Co., of NewYork, 4 Irving Place, New York City

C.M. Pigott

Exec. vp Pacific Car & Foundry Co., Renton, Washington

G. J. Ticoulat
Former senior V P in charge of international operations, Washington
Age 65.
Board of Advisors, Santa Clara University,
College of the Holy Name
Director of National Foreign Trade Concil, 10 Rockerfeller Plaza
NYC

Res: 63 Via Hermosa, Orinda, Calif.

G. E. Young
Retired Senior VP of co., no other directorships listed.

Vertrees Young
Res: Young's Road, Bogalusa, La.
Age 72. Went to M I T
Mobile , Ala.
Director: Gulf, Mobile & Oil Railroad. a 2,750 mile road from New Orleans and Mobile up along Mississippi to near Chicago, with branch east to Montgomery, Ala.

William J. Zellerbach

Res: 91 Commonwealth Ave. San Francisco
Fourth generation Zellerbach in company.
President of Zellerbach Paper Co., the distributing arm of CZ. Age 45.
Director: Sierra Capital Co., 351 California St., SF 4.(a small Business Investment Co. with assets of $8 million.)

Insurance Investors Fund, 417 Montgomery St., SF 4. Investment co. that invests in insurance securities. $8.7m assets.)

First Western Bank & Trust Co., 548 S. Spring St., Los Angeles 13 (A bank controlled by Greatamerica Corp., a Nevada holding co. owning banks and insurance cos.)

Also Crown Zellerbach has three Directors Emeritus:
W. H. Orrick--2648 Pacific Ave., San Francisco 15. Head of law firm that has represented CZ for years.

C.W. Goodyear---Formerly with Gaylord Container. Lives in Buffalo-don't have address at the moment.

Edwin J. Spiegel---Res; 220 N. Kingshighway, St. Louis 8--Old president of Gaylord Container. Director; First National Bank of St. Louis--General American Life Insurance Co., St. Louis Illinois Central Railroad, Chicago, Ill.---St. Louis Symphony Society---St. Louis Council of Boy Scouts

SUBSIDIARIES:

Crown Zellerbach A. G., Zurich, Switzerland.
Crown Zellerbach, Canada, Ltd., 1030 West Georgia St.,
Vancouver 5, B.C.

Whose principal plants are at Ocean Falls, British Columbia (pulp mills, newsprint, coaese and tissue paper); Elk Falls (Pulp newsprint, sulphate pulp); Richmond, B. C., (Converting and box making) and Fraser Mills B. C. (Plywood): and S. M. Simpson, Ltd., Vancouver (plywood and veneer). Crown Zellerbach Canada also owns Crown Zellerbach Building Materials, Ltd., Canadian Tugboat, Ltd., Beaty Laminate, Ltd., Bridge Lumber Co., and Northern Pulpwood, Ltd. Total sales, $110 million.

Brown Zellerbach (Panama), Inc.

Norsk Pacific Steamship Co., Ltd., Bahama Islands
(foreign registry for ships in international trade)

Waterway Terminals Co., Oregon
Operator of Public docking, warfage and warehouse facilities on Willamette & Columbia Rivers)

Western Transportation Co., Portland Oregon Barge and towing on same rivers

Zellerbach Paper Co., California (Merchandises paper) 343 Sansome Street, San Francisco 19, California.

St. Francisville Paper Co., Louisiana (50% owned with Time Inc.)

BUSINESS:

One of world's largest paper companies.
Production in 1964

| | |
|---|---|
| 2,083,129 | tons paper and paperboard |
| 22,835 | tons pulp for sale outside co. |
| 197,601 | thousands board feet lumber |
| 297,500 | thousands board feet plywood |

Products: Newspring, kraft and sulphite paper (much converted into wrapping and paper bags;) kraft paperboard for cartons, fibre shipping containers, packing materials, boxes, paper towels, napkins and facial tissue; waxed paper, plastic packaging, turpentine, Bogol (tall oil-used for paint insecticides, plastics), dimethyl sulfide, plywood, lumber.

Own or controls about 800,000acres of timberland in Washington and Oregon; 540,000 acres in Louisiana and Mississippi; 529,000 acres in Canada.

Sales, 1964: $662,240,000
Net Income, 1964: $46,593,000
Assets, end 1964: $695,205,000

Capacity: Pulp mills, about 57% kraft, 27% groundwood, 16% sulphite.
Paper---32% newsprint and printing paper;
41% coarse paper for bags and wrapping, finer for tissues, towels etc.
27% paperboard for boxes and cartons.
Chemicals (all at Bogalusa)
5 million lbs. dimethyl sulfoxide
10 million pounds dimethyl sulfide
10,000 tons tall oil (resinous oil used in paint, insecticide etc.)
575,000 gallons tuppentine (some of which produced elsewhere)

Converting capacity:
8.5 billion paper bags
2.9 million cases toilet tissue
2.1 million cases paper napkins
4.4 million cases paper towels
.5 million cases facial tissue
.3 million cases waxed paper rolls

St. Francisville (50% with Time Inc.) will have capacity of about 110,000 tons of printing paper by end of 1965.

Plants:

Antioch, California
multiwall bags, grocery bags, toilet tissue, towels, paper napkins, corrugated paper boxes

Port Townsend, Washington
multiwall bags, grocery pages

Camas, Washington
grocery and misc. bags, toilet tissue, towels, napkins

St. Helens, Oregon
grocery and misc. bags

Los Angeles, California
grocery and misc. bags, tissues, towels etc.

Carthage, New York
tissues, towels, napkins, etc.

West Linn, Ore.
Paper towels

Columbia City, Oregon
Lumber & Plywood.

Plants (cont.)

Bogalusa, La.
Multiwall bags, grocery bags, misc. bags, tissue, corrugated and fibre boxes, packing material, paper in sheets, 518,000 tons per yr. of pulp. This is the largest plant. Second is Camas, Washington.

In addition, through the Gaylord Container Division which used to be separate company)

Chicago, Ill,-paper in sheets
Miami, Fla.-Paper in sheets
Plymouth, Mich Paper in sheets
Weslaco, Texas Paper in sheets

Baltimore, O boxes
St. Louis, Mo boxes
Dallas Texas boxes
Houston, Texas boxes
San Antonio, Tex. boxes
Tampa, Fla. boxes
Greenville, S. C. boxes
Atlanta, Ga. boxes
Jersey City, New Jersey
Milwaukee, Wis. boxes
Los Angeles, California boxes
Carol Stream, Ill boxes
Greenville, Ind. boxes
Wauna, Wash. tissues

And through Western-Waxide Division:

San Leandro, California---waxed paper, plastic wrappings, foil
Los Angeles, Cal---Same
Portland, Ore---Same
Orange, Texas--Same

Research Laboratories

St. Louis, Mo.
Camas, Wash.
San Leandro, Calif.
Bogalusa, Louisiana

Minerals Division

owns working interest in 25 gas wells, 1 oil well
override royalty in 10 gas wells, 5 oil wells
76 mile pipeline to plantat Bogalusa.

Sales offices in 24 states, 37 foreign countries.

Bogalusa

Crown Zellerbach
Officials

**Lawyers:** Orrick, Dahlquist, Herrington, Sutcliffe and Philip S. Ehrlich, San Francisco.

**Auditors:** Lybrand Ross Bros and Montgomer, New York City

**Stock:** Offered by Blythe & Co., 14 Wall Street, NYC. Haven't had a recent issue, but in June, 1965, Blythe placed privately $100 million in notes for CZ, probably with insurance companies or pension funds. Blythe also handled loans for old Gaylord Container co.

There are 256,622 shares of preferred stock butstanding, owned by 2,542 shareholders; and 15,286,537 common shares, owned by 25,694 shareholders.

**Customers:**

There are 65,000 customers in U. S. and Canada. Difficult to get hold of names of largest ones, as they sell to many small converters as well as chain stores, etc. Zellerbach Paper Co., handles the set-up through jobbers all over the country.

The newsprint is a separate operation saleswise, and among the largest customers are:

Time and Life Magazines
Newsweek
Sunset Magazine
The Denver Post
Many papers in Hearst chain.

SEOFEE

HIGGS, SHERMAN OTIS et al. VS MALM, FRANKLYN et.al. NEW YORK 1967-1968

Box 37
Folder 17

State Historical Society Of Wisconsin

Please Retain Original Order

SEDFRE

HIGGS, SHERMAN OTIS et.al. VS MALM, FRANKLYN et.al. NEW YORK 1967-1968

Box 37
Folder 17

State Historical Society Of Wisconsin

Please Retain Original Order

At a Special Term, Part
thereof, of the Supreme Court
of the State of New York held
in and for the County of
Westchester, at the Courthouse
located at 166 Main Street,

in the City of White Plains,
on the day of January , 1968

PRESENT:

HON. **HON. JOHN J. DILLON, JUSTICE**

Justice

---

In the Matter of

STATE COMMISSION FOR HUMAN RIGHTS,

Petitioner,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

ORDER TO SHOW CAUSE

Index No.

---

Upon reading and filing the annexed petition of State Commission for Human Rights, verified on the 3rd day of January , 1968, by Bessie A. Buchanan, one of the Commissioners thereof, and the exhibits attached thereto, and the annexed affidavit of Leroy George Crosby, a complainant in a proceeding pending before said Commission, sworn to on the 18th day of December , 1967,

LET the respondents, Franklyn Malm and Anna F. Malm,

show cause before a Special Term, Part I , of this Court to be held in and for the County of Westchester, at the Courthouse at

166 Main Street, White Plains, New York

on the day of 1968 , at o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein, pursuant to Section 297.4 of the Executive Law, enjoining the respondent , his agents, representatives, servants, successors and assigns from selling, renting, leasing or otherwise disposing of certain housing accommodation, land or commercial space, to wit: the 3rd floor six-room apartment in the three family house located at 32 Purser Place, Yonkers, New York,

to any one other than Leroy George Crosby

, the complainant in Commission's Case

No. CH-15375-67 , entitled State Commission For Human Rights on the complaint of Mr. Leroy George Crosby, Complainant, against Mr. and Mrs. Franklyn Malme, Respondents,

until the final determination of such proceeding by the Commission and, if the Commission's final determination orders the respondent to offer to (rent) ~~(sell)~~ said housing accommodation, land or commercial space to said complainant, until the respondent complies with such order of the Commission, and for such other and further relief as the Court may deem just and proper, and it is

ORDERED, that pending the hearing and determination of this application, the respondent , his agents, representatives, servants, successors and assigns are hereby restrained and stayed from selling, renting, leasing or otherwise disposing of the aforesaid housing accommodation, land or commercial space to any one other than the aforesaid complainant.

Sufficient reason appearing therefor, let service of a copy of this order to show cause and the papers on which it is based upon the respondent herein personally on or before o'clock in the noon on , or by

be deemed good and sufficient service.

E N T E R

Justice of the Supreme Court
of the State of New York

HON. JOHN J. DILLON, JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

| | | |
|---|---|---|
| In the Matter of | | |
| STATE COMMISSION FOR HUMAN RIGHTS, | | |
| Petitioner, | | PETITION |
| - against - | | Index No. |
| FRANKLYN MALM and ANNA F. MALM, | | |
| Respondents. | | |

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

State Commission for Human Rights, by Bessie A. Buchanan, a Commissioner thereof, hereby petitions this court and respectfully alleges:

1. State Commission for Human Rights, hereinafter the "Commission", is a state agency created by the Law Against Discrimination (Executive Law, Art. 15, Sections 290 through 301, hereinafter the "Law") "with power to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space because of race, creed, color or national origin, and ... is hereby given general jurisdiction and power for such purposes." (Law, §290). The Commission is authorized to prevent and eliminate unlawful discriminatory practices as defined in Section 296 of the Law.

2. This petition is submitted in support of the Commission's application made pursuant to Section 297, Subdivision 4 of the Executive Law, for an order enjoining the respondents from selling, renting, leasing or otherwise disposing of certain housing accommodation, land or commercial space, to wit: the 3rd floor six-room apartment in the three family house located at 32 Purser Place, Yonkers, New York,

to anyone other than Leroy George Crosby , who is the complainant in a discrimination complaint against respondent now pending before the Commission, bearing Commission Case No.CH-15375-67 , entitled "State Commission For Human Rights on the complaint of Mr. Leroy George Crosby, Complainant, against Mr. and Mrs. Franklyn Malm, Respondents."

until the final determination of such proceeding by the Commission and, if the Commission's final determination orders the respondents to offer to rent ~~sell~~ said housing accommodation, land or commercial space to said complainant, until the respondents/ comply ~~complies~~ with such order of the Commission.

3. This application is made by the Investigating Commissioner in the name of the Commission in accordance with the provisions of Section 297, Subdivision 4 of the Law.

4. The grounds of the Investigating Commissioner's belief, with respect to all matters herein stated upon information and belief, are written statements contained in the Commission's case file and oral statements made to the Investigating Commissioner by members of the Commission staff, parties and witnesses in the course of investigation.

5. Section 296, Subdivision 5 of the Law provides in part:

> "(a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:
>
> (1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color or national origin of such person or persons.
>
> (2) To discriminate against any person because of his race, creed, color or national origin in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.
>
> (3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination."

6. Section 297 of the Law, as last amended by the Laws of 1965, Chapter 851, sets forth the procedures for the reception and processing by the Commission of complaints of unlawful discriminatory practices, including investigation, conciliation and hearing procedures.

7. Subdivision 4 of said Section 297 of the Law authorizes the Commission to apply by order to show cause for the relief sought herein.

Revised 3/20/67

8. Subdivision 4 of Section 297 of the Law authorizes the Court to include a temporary restraining order in the order to show cause.

9. On December 22, 1967, the complainant, a Negro, ~~Puerto Rican~~ filed with the Commission a complaint duly verified on December 18, 1967, in which he alleged that the respondents as owner and landlord had unlawfully discriminated against him by refusing to rent, ~~or sell, or permit subleasing~~ to him an apartment ~~house~~ located at 32 Purser Place, Yonkers, New York,

because of complainant's race and color, ~~national origin~~. A copy of said complaint, as amended, is attached hereto as Exhibit A.

10. In essence, said complaint alleges that on Thursday, December 7, 1967, the following advertisement appeared in the Herald Statesman: "So. Yonkers - 6 rooms, porch, 3 family house, Adults preferred, Write Box HM 44 this newspaper".

Complainant wrote a letter in answer to said advertisement indicating that he wished to rent the said apartment, but received no reply.

On information and belief, a member of the Fair Housing Committee of Yonkers had written a letter in answer to the said ad and received a telephone call from one of the owners inviting him to see the apartment at 32 Purser Place, Yonkers, New York. The information regarding the location of the apartment was made available to complainant.

In the morning of December 16, 1967, complainant visited the home of respondents at 32 Purser Place, Yonkers, New York, and inquired about the apartment. He was told that the apartment was empty but that he had received other letters from prospective applicants for the apartment who would be given first preference.

At noon on the same date, December 16, 1967, Peter Hemingson, a white person, went to 32 Purser Place and spoke to Mr. and Mrs. Malm. Mr. Hemingson learned of the address of the premises in the same way as did complainant. He had not sent a letter to Box HM 44 in answer to the advertisement.

Mr. Hemingson was shown the apartment and was told that he could rent the apartment immediately.

Mrs. Malm volunteered that they had refused to show the apartment to a Negro whose name was Crosby because they didn't want to rent to Negroes. She explained further that she had put curtains on the windows of the apartment because she didn't want the apartment to look vacant from the street.

11. Upon information and belief, the unlawful discriminatory practices thus alleged in said complaint were committed in ~~County or respondent resides or maintains an office for the transaction of business at~~

~~in~~ ~~County of the housing accommodation, land or commercial space specified in said complaint before the Commission is located in~~ Westchester County and pursuant to Section 297, Subdivision 4 of the Law, this application may be made in this county to this Court.

12. Upon information and belief, respondents are ~~is~~ owner in fee ~~or lessee~~ of the premises in question.

13. On December 26, 1967, the Chairman of the Commission designated Commissioner Bessie A. Buchanan to investigate the complaint, pursuant to Section 297, Subdivision 2 of the Law, and said Commission did, with the assistance of the Commission's staff, so investigate such complaint.

14. After said investigation, the Investigating Commissioner determined that there is probable cause to credit the allegations of the complaint and a copy of such determination is attached hereto, marked Exhibit B .

15. As further provided in Section 297, Subdivision 2 of the Law, the Investigating Commissioner endeavored to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion, but such efforts failed to eliminate such practice and the Investigating Commissioner thereupon directed that the matter be ordered for public hearing before the Commission.

16. A hearing is to be held ~~on the~~ ~~day of~~ , ~~196~~ before three hearing commissioners, sitting as the Commission, designated by the Chairman in accordance with Section 297, Subdivision 2 of the Law.

17. The Investigating Commissioner has determined that respondent is doing or procuring to be done an act tending to render ineffectual any order the Commission may enter in the aforesaid Commission proceeding. This conclusion is based on the following evidence of which the Investigating Commissioner has information and which he believes:

The respondents have indicated that they do not wish to rent to Negroes. They are continuing their attempts to rent the apartment to whites only. (See Affidavit of Peter Hemingson, attached hereto as **Exhibit C**).

18. It is readily apparent that such acts of the respondents tend to, or will, render ineffectual any order the Commission may enter in the pending proceeding if, after the duly scheduled hearing, the Commission determines that the respondent has committed the unlawful discriminatory practices charged in the complaint. It is therefore urgently necessary that the respondents be restrained from renting or otherwise disposing of said housing accommodation, land or commercial space if the Commission is not to be frustrated in fulfilling its statutory duty to eliminate and prevent discrimination and in protecting the legislatively recognized and declared civil right (see Law, Section 291, Subdivision 2) of all persons to equality of opportunity in the use and occupancy of housing accommodations without discrimination because of race, creed, color or national origin.

19. By virtue of the aforesaid facts and law, a temporary restraining order, pending the hearing and determination of the instant application, maintaining the status quo, is necessary herein.

20. No prior application for this or other similar relief has been made to this or any other court.

WHEREFORE, your petitioner respectfully prays for an order of this Court enjoining the respondent, his agents, representatives, servants, successors and assigns from selling, renting, leasing, or otherwise disposing of the housing accommodation, land or commercial space, to wit:

the 3rd floor six-room apartment

in the premises located at 32 Purser Place, Yonkers, New York,

to any one other than Leroy George Crosby,

the complainant in Case No. CH-15375-67

pending before State Commission for Human Rights, until the final determination of such proceeding by the Commission and, if the Commission's final determination orders the respondent s to offer to rent sell said housing accommodations, land or commercial space to said complainant, until the respondent s/~~complies~~ comply with such order of the Commission, and for such other and further relief as the Court may deem just and proper.

STATE COMMISSION FOR HUMAN RIGHTS

By:

Investigating Commissioner
Bessie A. Buchanan

STATE OF NEW YORK ) SS.:
COUNTY OF NEW YORK )

BESSIE A. BUCHANAN, being duly sworn, deposes and says: that she is the Investigating Commissioner herein; that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated on information and belief; and that as to those matters she believes the same to be true.

Bessie A. Buchanan
Investigating Commissioner
Bessie A. Buchanan

Sworn to before me this 3rd
day of January, 1968

AMOS H. CARNEGIE JR.
NOTARY PUBLIC, State of New York
No. 41-0572352
Qualified in Queens County
Term Expires March 30, 1969

W YORK : EXECUTIVE DEPARTMENT

STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

GEORGE
Mr. Leroy/Crosby Complainant,

against

Mr. & Mrs. Franklyn Malm Respondent.

COMPLAINT NO. C# 15375 67

I, Leroy George Crosby
residing at 122 Woodworth Avenue, Yonkers, N.Y. Tel. No. 423-3870 (daughter) Mrs. Santos
charge Mr. and Mrs. Malm, et al
whose address is 32 Purser Place, Yonkers, N.Y. Tel. No. YO 9-2125
with an unlawful discriminatory practice relating to housing accommodations (x) commercial space ( )
on or about Saturday, December 16, 1967 and continuing thereafter
by withholding available accommodations; refusal to rent

because of RACE (x), CREED ( ), COLOR (x), NATIONAL ORIGIN ( ).

The particulars are: 1. The following advertisement appeared in the Herald States man on Thursday, Dec. 7, 1967: "So.Yonkers-6 rooms,porch,3 family house, Adults preferred, Write Box HM44 this newspaper".

2. I received no answer to my letter written in answer to this advertisement, so on Saturday, December 16, 1967, in the forenoon, Iwent to 32 Purser Place and inquired regarding the 6-room apartment.

3. Mr. Malm advised that [illegible] ~~I could not see the~~ apartment. He said he hadmny letters in answer to his advertisement and they would be given the opportunity for the apartment first. He said he had a family coming to see the apartment that monring, and [illegible] would not show it to me.

4. Mr. Malm said he would take my name and ~~kxkxphxxx~~ address, and did so.

5. I am a Negro, and believe that this apartment was denied to me because of that fact, in violation of the MetcalfBaker law.

4

I have not commenced any action, civil or criminal, based upon the above grievance.

STATE OF NEW YORK }
COUNTY OF } ss:

X Leroy George Crosby
(Signature of Complainant)

Leroy Crosby, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of h own knowledge except as to the matters therein stated on information and belief; and that as to those matters he believes the same to be true.

Subscribed and sworn to before me
this day of , 19

X Leroy George Crosby
(Signature of Complainant)

Form H: 4-1-63-10M (203-77)

Exhibit A

# DETERMINATION AFTER INVESTIGATION

LEROY GEORGE CROSBY

vs

FRANKLYN MALM, SR., AND ANNA H. MALM

Csse No. CH-15375-67

Bessie A. Buchanan
Investigating Commissioner

December 29, 1967

Exhibit B

DETERMINATION AND ORDER AFTER INVESTIGATION

Case No. CH-15375-67: Leroy George Crosby vs Franklyn Malm, Sr., and
Anna H. Malm

: : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :

Complainant, a Negro, filed a verified complaint with the New York State Commission for Human Rights against the above-named respondents, charging respondents with an unlawful discriminatory practice relating to a housing accommodation, in violation of the New York Law Against Discrimination.

Briefly, complainant alleges that in response to a newspaper advertisement of December 7, 1967, offering a six-room apartment, he wrote to respondents. Having received no reply, he visited the premises on December 16, 1967, and was told other responses for the apartment had been received. Complainant was not permitted to see the apartment, and he believes he was refused an available apartment because of his race and color.

The facts gathered during the course of the investigation conducted herein support a finding of probable cause to credit the allegations of the specific complaint. Accordingly, I do so find.

Pursuant to Section 297.2(b) of the Law Against Discrimination, this matter is ordered for public hearing.

Dated: December 29, 1967

Bessie A Buchanan

Bessie A. Buchanan
Investigating Commissioner

To: Mr. Leroy George Crosby, Complainant
122 Woodworth Avenue
Yonkers, New York

Mr. Franklyn Malm, Sr., Respondent
32 Purser Place
Yonkers, New York

Mrs. Anna H. Malm, Respondent
32 Purser Place
Yonkers, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

| | |
|---|---|
| In the Matter of<br>STATE COMMISSION FOR HUMAN RIGHTS,<br>Petitioner,<br>- against -<br>FRANKLYN MALM and ANNA F. MALM,<br>Respondents | AFFIDAVIT |

STATE OF NEW YORK )
COUNTY OF NEW YORK) ss.:

Peter Hemingson, being duly sworn, deposes and says:

That I reside at 527 Riverdale Avenue, Yonkers, New York. I am a white person. That on Saturday, December 16, 1967, at approximately noon, I went to visit the premises located at 32 Purser Place, Yonkers, New York. I had been advised by a member of the Yonkers Fair Housing Committee that a 6-room apartment at the said address had been advertised for rent in the Herald-Statesman newspaper. When I got to the said premises I met Mr. and Mrs. Malm, the owners of the said 3 family house. I asked Mr. and Mrs. Malm if they had a 6-room apartment for rent. They said that they had and they showed me the apartment which was located on the third floor of the house. They indicated that the apartment rented for $92.00 per month. I was informed by the Malms that the apartment was available to me if I wished it.

Mrs. Malm, during our conversation, advised me that a Negro by the name of Crosby had attempted to rent the apartment. She indicated that they had refused to show him the apartment because they did not want to rent to Negroes. Mrs. Malm advised that she had received a letter from Mr. Crosby who asked for the apartment in response to an advertisement they had run in the Herald-Statesman. Mrs. Malm said that they felt the letter was from a Negro, and so they tore it up. Mr. Malm said that he knew Mr. Crosby as the man who worked at Sears & Roebuck and who waited on him.

I was also advised by the Malms that they had turned down another Negro applicant.

The Malms had accepted me as a prospective tenant without inquiring into my income, occupation or any other background information.

Sworn to before me this
4th day of January, 1968

AMOS H. CARNEGIE JR.
NOTARY PUBLIC, State of New York
No. 41-0572382
Qualified in Queens County
Term Expires March 30, 19 69

Peter H Hemingson

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of

STATE COMMISSION FOR HUMAN RIGHTS,

Petitioner, INDEX 116-68

-against-

FRANKLYN MALM and ANNA F. MALM,

Respondents.

---

STATE OF NEW YORK )
COUNTY OF WESTCHESTER } SS:
CITY OF YONKERS )

MARTIN J. STAMLER, deposes and says:

1. That he is an attorney at law duly authorized to practice before the Courts of the State of New York.

2. That he is associated with the law firm of ADLER & ADLER, Attorneys for respondents in the above entitled matter.

3. He makes this affidavit in support of respondents' opposition to petitioner's motion for a temporary injunction against the respondents herein.

4. Pursuant to Section 297, Subdivision 4 of the Executive Law of the State of New York, the STATE COMMISSION FOR HUMAN RIGHTS may apply to the SUPREME COURT where an alleged unlawful and discriminatory practice as a Commissioner determines the respondent is doing or causing to be done which tends to render ineffectual any Order the Commission may enter in such proceedings.

5. In this case we have a petition by the STATE COMMISSION FOR HUMAN RIGHTS for a temporary injunction pursuant to the provisions of the Executive Law above cited.

6. Where there is merely an inference that the complaining individual inferred from the acts alleged to have been committed by the party (s) complained of and there is not an actual state of facts that amount to discrimination, and also

as there are sharply conflicting statements in the affidavits present, as here, and also the respondents would be left without a remedy if an injunction is granted and subsequently the Commission finds that there has been no discriminatory practice, then a temporary injunction should not issue. (SEE State Commission for Human Rights vs Harvey Properties Inc., 50 Misc. 2nd, 672, 271 NYS 2nd 365).

7. As stated in the affidavit of FRANKLYN MALM and of ANNA F. MALM, in support of the respondents' opposition to petitioner's motion for a temporary injunction, the respondents desire to rent to one BERT GIBSON, who was an applicant for the premises involved herein prior to the time that the complainant, LEROY GEORGE CROSBY, evidenced any interest in the premises. BERT GIBSON is a desirable tenant financially and in respect of the fact that his family consists solely of adults, as the "ad" advertised the availability of the premises indicated a preference for.

8. It would be an economical hardship to leave the premises empty especially since LEROY GEORGE CROSBY, the complainant herein, is not acceptable by virtue of the fact that he has minor children, and it certainly would be questionable as to whether the STATE COMMISSION FOR HUMAN RIGHTS could lawfully order the respondents herein not to rent the premises involved herein to anyone other than LEROY GEORGE CROSBY.

9. An injunction is a very drastic remedy and the Court should exercise its discretion in granting a temporary injunction (and do so) only when it is clearly and convincingly established that the moving party is entitled to wit: That the respondent will act in a manner such as to make ineffectual any order which the Commission can lawfully make.

10. The landlord has a right to discriminate with regard to the disability in a financial sense and in the sense of the disability of having children occupy the available premises so

long as there is no discrimination based on race, creed, color or religion. (SEE General Municipal Law Section 239 "o through q" which does not preclude the landlord from all inquiry

11. Any question of discrimination on the part of the respondents herein against LEROY GEORGE CROSBY because he is a negro is vitiated by the fact that the respondents herein are desirous of renting the premises to a negro. Further, the negro to whom the respondents are desirous of renting, applied to lease the premises prior to the time when the complainant evidenced a desire to see the premises. The only discrimination involved herein on the part of the respondents is a discrimination based on priority of evidenced intention, and not any discrimination based on color.

WHEREFORE, deponent respectfully prays that the Court deny the temporary injunction prayed for by the petitioner, the STATE COMMISSION FOR HUMAN RIGHTS, together with the costs of this motion.

Sworn to before me this:
20th day of February, 1963 MARTIN J. STAMLER

SOPHIA KOPF
Commissioner of Deeds
For the City of Yonkers
Term Expires Dec. 31, 196

8

LAW OFFICES
OF
ADLER & ADLER
20 SOUTH BROADWAY
YONKERS, N. Y. 10701
TEL. YONKERS 3-9300

ULYSSES S. ADLER (1896-1962)
ALAN B. ADLER
FREDERICK J. ADLER

February 14, 1968

Amos Carnegie, Esq.
State Commission For Human Rights
270 Broadway
New York, N. Y. 10007

Re: State Commission for Human Rights v. Malm

Dear Sir:

Enclosed please find copy of Order to Show Cause on Motion To Vacate Order Granted on Default and copy of Note of Issue in the above entitled matter.

Very truly yours

ADLER & ADLER

By: Martin J. Stamler
Martin J. Stamler

MJS:ms
Encls.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

---------------------------------------------------------------X

In the Matter of

STATE COMMISSION FOR HUMAN RIGHTS,

Petitioner,

-against-

FRANKLYN MALM and ANNA F. MALM,

Respondents.

---------------------------------------------------------------X

NOTE OF ISSUE

Index No.:

Motion returnable at Special Term Part I of the Supreme Court of the State of New York, County of Westchester on February 21, 1968 at 9:30 a.m.

Motion to vacate an Order.

ADLER & ADLER, attorneys for Respondents, 20 South Broadway, Yonkers, New York.

AMOS CARNEGIE, attorney for Petitioner, 270 Broadway, New York, N. Y. 10007.

PRESENT:

HON.

Justice.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

---

In the Matter of

STATE COMMISSION FOR HUMAN RIGHTS,

Petitioner,

-against-

FRANKLYN MALM and ANNA F. MALM,

Respondents.

---

ORDER TO SHOW CAUSE ON MOTION TO VACATE ORDER GRANTED ON DEFAULT

Upon the decision herein and the subsequent Order pursuant thereto of the Hon. Robert J. Trainor, Justice of this Court, granting a motion for a temporary injunction in the above entitled matter, and on the reading and filing of the annexed affidavit of Martin J. Stamler sworn to the 13th day of February, 1968 and the exhibits attached thereto, it is

ORDERED, that the State Commission for Human Rights, the petitioner, show cause before this Court at a Special Term Part I thereof to be held at the Courthouse located at 166 Main Street, White Plains, New York on the 21st day of February, 1968 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an Order should not be made vacating the Order previously granted, granting petitioner a temporary injunction on respondents' default and restoring the petitioner's motion for a temporary injunction to the Special Term Part I calendar, and in the event that the previous Order is vacated, that argument then and there proceed, and that upon such argument the motion of said petitioner for a temporary injunction be denied, and for such other and further relief as this Court may deem just and proper.

Sufficient reason appearing therefor, let service of a copy of this Order and the papers on which it is granted upon the attorney for the petitioner herein, by certified mail, return receipt requested, on or before the 14th day of February, 1968 be deemed sufficient.

J. F. Hawkins

J. S. C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

X

In the Matter of

STATE COMMISSION FOR HUMAN RIGHTS,

Petitioner,

**AFFIDAVIT**

-against-

FRANKLYN MALM and ANNA F. MALM,

Respondents.

X

STATE OF NEW YORK )
) SS:
COUNTY OF WESTCHESTER )

MARTIN J. STAMLER being duly sworn deposes and says:

1. That he is an attorney-at-law duly admitted to practice before the Courts of the State of New York.

2. That he is associated with the law firm of Adler & Adler, attorneys for Respondents in the above entitled matter.

3. Deponent makes this affidavit in support of an application to vacate an order of Hon. Robert J. Trainor, Justice of this Court, granted upon a motion by the Petitioner in the above entitled matter after default by Respondents, and to restore the Petitioner's motion to the Special Term Part I calendar.

4. The said motion was made by Petitioner by an order to show cause dated the 4th day of January, 1968 and returnable at a Special Term Part I of this Court held in and for the County of Westchester on the 9th day of January, 1968.

5. On the 9th day of January, 1968, Petitioner's motion came on to be heard before Mr. Justice Robert J. Trainor and on said date, Petitioner's affidavit and exhibits were submitted to the Court without opposition.

6. Thereafter and on or about the 29th day of

January, 1968, a decision was duly rendered on the said motion by Mr. Justice Robert J. Trainor granting Petitioner's motion, there being no opposition thereto. On the 5th day of February, 1968, an order was made and entered granting said motion.

7. Adler & Adler were retained by the Respondents, Franklyn Malm and Anna F. Malm, on the 5th day of January, 1968, just two business days prior to the date on which the order to show cause was returnable.

8. I wrote a letter (a copy of which is annexed hereto and maked Exhibit "A") to Amos Carnegie, Esq., the attorney for the State Commission for Human Rights, who is handling this matter, requesting him to adjourn the return date of the order to show cause so that we could properly prepare the Respondents' opposition to the State Commission For Human Rights's motion for an injunction.

9. Under the circumstances, having heard nothing from Mr. Carnegie, I assumed that he would adjourn the motion for several days pursuant to my request.

10. Adler & Adler did not appear on January 9, 1968 due to their mistaken belief and what they feel now was an excusable neglect to appear in opposition to the motion for an injunction.

11. The Respondents have a valid and sustainable defense in opposition to the facts produced by the State Commission For Human Rights upon said motion.

12. There has been a misapprehension of the facts as all of the facts were not before the Court because the Respondents did not present the facts for their side.

13. The facts which would be produced if the previous order was vacated and the motion restored to the Special Term Part I calendar, would substantially alter the view which the Court would have of the facts of the entire matter.

14. No prior application for other or similar relief has been made to this Court or to any other Court.

WHEREFORE, deponent respectfully prays that the Court grant this application to vacate the order of the Hon. Robert J. Trainor dated the 5th day of January, 1968 enjoining the Respondents and their successors in interest from disposing of certain housing accommodations in any manner and restoring the motion of the State Commission For Human Rights to the Special Term Part I calendar, and immediately hear said motion.

Sworn to before me this

13th day of February, 1968.

Martin J. Stamler

ALAN B. [illegible]
NOTARY PUBLIC, State of [illegible]
No. [illegible]
Qualified in Westchester [illegible]
Commission Expires [illegible]

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WHEREFORE, deponent respectfully prays that the Court grant this application to vacate the order of the Hon. Robert J. Trainor dated the 5th day of January, 1968 enjoining the Respondents and their successors in interest from disposing of certain housing accommodations in any manner and restoring the motion of the State Commission For Human Rights to the Special Term Part I calendar, and immediately hear said motion.

Sworn to before me this

13th day of February, 1968.

Martin J. Stamler

ALAN B. [illegible]
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in Westchester County
Commission Expires [illegible]

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JANUARY 5, 1967

STATE COMMISSION FOR HUMAN RIGHTS
270 BROADWAY
NEW YORK, NEW YORK 10007

ATT: MR. AMOS CARNEGIE

DEAR MR. CARNEGIE:

WE HEREBY APPEAR FOR FRANKLYN MALM AND, ANNA F. MALM IN THE MATTER OF ;

STATE COMMISSION FOR HUMAN RIGHTS

against

FRANKLYN MALM & ANNA F. MALM.

WE WERE RETAINED TODAY AND HOPE YOU WILL GRANT US AN ADJOURNMENT SO THAT WE MAY PREPARE OUR CLIENTS CASE.

THANK YOU FOR ANY CONSIDERATION YOU MAY GIVE US.

VERY TRULY YOURS:
ADLER & ADLER
by

MJS/ms

MARTIN J. STAMLER

Exhibit "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

---------------------------------------------------------------X

In the Matter of

STATE COMMISSION FOR HUMAN RIGHTS,

Petitioner,

-against-

FRANKLYN MALM and ANNA F. MALM,

Respondents.

---------------------------------------------------------------X

**AFFIDAVIT IN SUPPORT OF MOTION ON RE-ARGUMENT**

Index No.: 116/68

STATE OF NEW YORK )
) SS:
COUNTY OF WESTCHESTER )

FRANKLYN MALM and ANNA F. MALM being duly sworn each for himself does depose and say:

I am a Respondent in the above entitled matter.

On the 5th day of January, 1968 I was served with a copy of an order to show cause before a Special Term Part I of the Supreme Court of the State of New York in and for the County of Westchester, why an order should not be entered against me enjoining me, my agents, representatives, servants, successors and assigns from selling, renting, leasing or otherwise disposing of certain housing accommodations, land or commercial space, to wit, the Third Floor, six room apartment in the three family house located at 32 Purser Place, Yonkers, New York to anyone other than Leroy George Crosby, the complainant in the Commission's case in the above entitled matter.

Based on the complaint of Leroy George Crosby ( Exhibit "A" of the original motion for the temporary injunction), the petition of the State Commission for Human Rights, by Bessie A. Buchanan, Commissioner, alleged as the basis of its prayer for injunctive relief against Respondents, in effect, the following:

a) That on Thursday, December 7, 1967, an ad appeared in the Herald Statesman advertising the availability of a six room apartment.

b) That Leroy George Crosby, complainant in the above entitled matter, wrote a letter answering said advertisement indicating that he wished to rent the said apartment.

c) That Leroy George Crosby received no answer to his letter.

d) That the complainant, Leroy George Crosby, obtained the residence address of the available apartment from the Fair Housing Committee of Yonkers (which had obtained it from Respondents) and went to the address.

e) That one of us, to wit, Franklyn Malm, advised the complainant that there had been many letters answering the advertisement and that those correspondents would be given priority in renting the apartment.

f) That one such family was coming to see the apartment that same morning.

g) That Franklyn Malm told Leroy George Crosby that he would take his name and address.

Leroy George Crosby seems to be complaining about the fact that he received no answer to his letter. If he thinks that he was being discriminated against because we failed to answer his letter, he was not. From his letter I certainly could not tell whether he was Negro or Caucasian. In fact, there are two families with whom we are friendly, at 15 Radford Street, Yonkers, New York, by the name of Crosby, who are White, and, in fact, there is a nationally famed actor by the name of Bing Crosby, who is also White. The failure to reply to Leroy George Crosby's letter would certainly have no basis in prejudice against Negroes.

In fact, the apartment had been advertised for rent off and on since October, 1967.

In fact, Franklyn Malm told the complainant that there was an offer to rent, submitted with a $50.00 deposit.

In fact, the apartment was rented to one Mr. & Mrs. Winnick, who had bound us by leaving a $50.00 deposit, with an offer to rent, but shortly thereafter, Mr. & Mrs. Winnick became involved in family problems and had to withdraw their offer.

We are not attempting to rent the apartment to White people only. In fact, it is our intention to rent the apartment and, coincidentally, to a Negro, if this Court will set aside the injunction it has previously granted to the Petitioner.

It is our intention to discriminate among persons only in a morally and legally acceptable manner, to wit, by the order in which application was made for the lease of the premises.

Attached hereto and marked Exhibit "A" is a letter dated December 3, 1967 which was received by us from one Bert Gibson.

Bert Gibson is a Negro.

We are desirous of renting the premises involved herein to the aforenamed Bert Gibson, whose application by letter dated December 3, 1967 was prior to the interest shown by the complainant herein in renting.

The reason that we did not rent to Mr. Bert Gibson prior to the time when the Commission sought its injunction against us was that Bert Gibson was bound by the terms of a lease to pay rent on other premises and has been attempting to gain release from his obligations under the other lease.

If the Court denies the petition of the State Commission for Human Rights for an injunction against us, we will forthwith rent the premises involved herein to said Bert Gibson (who is now able to rent it), the party whose interest in renting was evidenced to us prior to that of anyone else now desirous of renting.

We are under a great hardship having to leave the apartment vacant pending the outcome of proceedings on the complainant's complaint before the State Commission for Human Rights. We feel that we have a right to choose to whom to rent as long as we do not discriminate on a racial basis. That Leroy George Crosby has several children and is unacceptable for that reason. The advertisement specifically stated "adults preferred". That Franklyn Malm is a sick man. The noise that children understandably make in the course of their play and otherwise would be too much for Franklyn Malm to withstand under the conditions.

WHEREFORE, deponents respectfully pray that the Court ~~set aside~~ deny the temporary injunction ~~granted to~~ prayed for by the State Commission for Human Rights in ~~their original~~ its' motion.

Sworn to before me this
9th day of February, 1968.

ALAN B. ADLER
NOTARY PUBLIC, State of New York
No. 60-0020150
Qualified in Westchester County
Commission Expires March 30, 19 69

Franklyn Malm

Anna F. Malm

Tompkins

7.30 this evening
Spoke to him
a real gentleman

~~Barnes & Goldsmith, Inc.~~
~~Men's Sport Shirts~~
~~350 FIFTH AVENUE~~
~~EMPIRE STATE BUILDING~~
~~NEW YORK, N. Y. 10001~~

261 st & Broad

6629 Broadway
Riverdale, N.Y.
Dec. 3, 1967

Dear Sir:

Having seen your Advertisment in the Herald Statesman for an apartment to let, I hereby make application for same.

I am employed as an A/c. Clerk for Barnes & Goldsmith Inc. NYC. and my family consists of my Mother, Brother & self. (All adult) I can be reached after 7pm at 884-5156 or during the hours of 9-5 week days at 279-9275. [illegible]

Very truly yours,
Bert Gibson

BERT. GIBSON.

STATE OF NEW YORK : EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

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STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

SHEARIN OTIS HIGGS,

Complainant,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

NOTICE OF CONSOLIDATED HEARING

Complaint Case No. CH-15400-68

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STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

LEROY GEORGE CROSBY,

Complainant,

- against -

FRANKLYN MALM and ANNA F.MALM,

Respondents.

Complaint Case No. CH-15375-67

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STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

EDWARD HINES,

Complainant,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

Complaint Case No. CH-15362-67

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SIRS:

PLEASE TAKE NOTICE that a hearing will be held in the above-entitled matter before three Hearing Commissioners at 270 Broadway, New York City, New York on the 21st floor, on the 18th day of April, 1968, at 10:00 o'clock in the forenoon of that day pursuant to Section 295, Subdivision 7 and Section 297 of the New York State Law Against Discrimination and Rules 6 and 8 of the Rules Governing Practice and Procedure before the State Commission for Human Rights.

THE PURPOSE OF THE HEARING will be to hear and determine the charges of unlawful discriminatory practices alleged in the annexed verified complaint and all relevant issues in connection therewith.

THE ABOVE-NAMED RESPONDENTS may file with the State Commission for Human Rights written verified answer in quadruplicate within ten days from the date of service of this notice of hearing and complaint, pursuant to Section 297 of the New York State Law Against Discrimination and Rule 7 of the Rules Governing Practice and Procedure before the State Commission for Human Rights.

A FAILURE BY THE RESPONDENTS to file written verified answer to any allegations of the complaint herein shall be deemed an admission of such allegation of said complaint.

THE ABOVE-RESPONDENTS may appear at said hearing in person or by counsel. The respondents may cross-examine witnesses and, if respondents have filed verified answer, respondents may submit oral testimony and other evidence in support of said answer.

THE ABOVE-NAMED COMPLAINANTS may be present at said hearing and shall be allowed to intervene and present testimony in person or by counsel.

ALL PARTIES HERETO are advised to bring to the hearing, witnesses, if any, and all evidence pertinent to this matter, including books, records, papers, cards and correspondence.

PLEASE TAKE FURTHER NOTICE that if, upon all the evidence at the hearing, the Commission shall find that any or all of the respondents have engaged in an unlawful discriminatory practice as defined in the New York State Law Against Discrimination, the Commission will issue an order against any or all of the aforesaid respondents, pursuant to Section 297 of the New York State Law Against Discrimination, requiring such respondent or respondents to cease and desist from such unlawful discriminatory practice as is found and to take such affirmative action as in the judgment of the Commission will effectuate the purposes of the Law.

THE DULY DESIGNATED Investigating Commissioner of the State Commission for Human Rights, BESSIE A. BUCHANAN, has directed that this notice of hearing and complaint, as amended, be issued and served in the name of the State Commission for Human Rights, pursuant to Section 297 of the New York State Law Against Discrimination.

Dated: New York, New York

STATE COMMISSION FOR HUMAN RIGHTS

By:

Robert J. Mangum
Chairman

TO:

COMPLAINANTS

Shearin Otis Higgs
26 Randolph Street
Yonkers, New York

Leroy George Crosby
122 Woodworth Avenue
Yonkers, New York

Edward Hines
50 Herriot Street
Yonkers, New York

RESPONDENTS

Franklyn Malm
32 Purser Place
Yonkers, New York

Anna F. Malm
32 Purser Place
Yonkers, New York

ATTORNEY FOR RESPONDENTS

Adler & Adler, Esqs.
20 South Broadway
Yonkers, New York

STATE OF NEW YORK:EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

|  |  |  |
|---|---|---|
| STATE COMMISSION FOR HUMAN RIGHTS<br>on the complaint of<br>SHEARIN OTIS HIGGS,<br>Complainant,<br>- against -<br>FRANKLYN MALM and ANNA F. MALM,<br>Respondents. | X<br>:<br>:<br>:<br>:<br>:<br>:<br>X | AMENDED COMPLAINT<br>Case No. CH-15400-68 |

/

Complainant, Shearin Otis Higgs, complaining of the respondents alleges:

## THE CHARGE

I charge that Franklyn Malm and Anna F. Malm, the owners of the three-family house located at 32 Purser Place, Yonkers, New York, discriminated against me by refusing to rent or lease and otherwise denying to and withholding from me the third floor, 6-room apartment in the aforementioned premises because of my color, and thereby committing an unlawful discriminatory practice under Section 296.5 of the Law Against Discrimination.

## PARTICULARS

1. At all times hereafter mentioned, respondents Franklyn Malm and Anna F. Malm were the owners of the house located at 32 Purser Place, Yonkers, New York.

2. At the time of the events complained of, I resided at 26 Randolph Street, Yonkers, New York.

3. I am a Negro.

4. On or about the 7th day of December 1967, the following advertisement appeared in the Herald Statesmen: "So. Yonkers - 6 room, porch, 3 family house, Adults preferred, White box HM 44 this newspaper".

5. On information and belief, a member of the Fair Housing Committee, Yonkers, wrote a letter in answer to the said advertisement.

6. On information and belief, the said member of the Fair Housing Committee of Yonkers received a telephone call from one of the respondents inviting him to see the apartment at 32 Purser Place, Yonkers, New York.

7. The respondent who called the member of the Fair Housing Committee informed said member of the location of the said apartment.

8. I was informed by the said member of the Fair Housing Committee of the location of the said apartment.

9. On or about the 16th day of December 1967, I visited the home of respondents at 32 Purser Place, Yonkers, New York and inquired about the apartment.

10. I was shown the apartment by Mr. Malm but was told that he had a waiting list.

11. Mr. Malm questioned me as to my occupation.

12. Mr. Malm asked me why my wife and I wanted such a large apartment.

13. Mr. Malm denied me the opportunity to leave a deposit on the apartment.

14. I was told by the respondent Mr. Malm that the rental might be more than $92 as there would be some cost in fixing up the apartment.

15. On information and belief, on Monday December 18, 1967 a white person telephoned respondents and was told that the apartment was still available.

16. On information and belief, during the said telephone conversation, respondent Mrs. Malm advised the white person that the apartment could be seen and that a deposit could be left on the apartment if it was found to be satisfactory.

17. I am a Negro. Respondents have refused to rent the said apartment to me because of my color.

18. I made, signed and filed my original verified complaint herein on December 18, 1967; I am making, signing and filing this amended complaint in accordance to Section 297 of the Law Against Discrimination based on my own knowledge and the knowledge given me by representatives of the Fair Housing Committee of Yonkers.

19. I have not committed any action, civil or criminal based upon the above grievance.

Shearin Otis Higgs

Shearin Otis Higgs

Sworn to before me this
21 day of February 1968
Robert K Hall

ROBERT K. HALL
Public in the State of New York

STATE OF NEW YORK )
COUNTY OF WEST- ) ss.:
CHESTER

SHEARIN OTIS HIGGS , being duly sworn, deposes and says: That he is the Complainant in this proceeding; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Shearin Otis Higgs
SHEARIN OTIS HIGGS

Sworn to before me this
26 day of Feb 1966
Robert K Hall

ROBERT K. HALL
Notary Public in the State of New York
No. 60-4726535
Appointed in Westchester County
Commission Expires March 30, 1968

STATE OF NEW YORK:EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

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STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

LEROY GEORGE CROSBY,

Complainant,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

---

AMENDED COMPLAINT
Case No. CH-15375-67

Complainant, Leroy George Crosby, complaining of the respondents alleges:

## THE CHARGE

I charge that Franklyn Malm and Anna F. Malm, the owners of the three-family house located at 32 Purser Place, Yonkers, New York, discriminated against me by refusing to rent or lease and otherwise denying to and withholding from me the third floor, 6-room apartment in the aforementioned premises because of my color, and thereby committing an unlawful discriminatory practice under section 296.5 of the Law Against Discrimination.

## PARTICULARS

1. At all times hereafter mentioned, respondents Frankly Malm and Anna F. Malm were the owners of the house located at 32 Purser Place, Yonkers, New York.

2. At the time of the events complained of, I resided at 122 Woodworth Avenue, Yonkers, New York.

3. I am a Negro.

4. On or about the 7th day of December 1967, the following advertisement appeared in the Herald Statesmen: "So. Yonkers - 6 room, porch, 3 family house, Adults preferred, WRite box HM 44 this newspaper".

5. On or about December 7, 1967 I wrote a letter in answer to said advertisement indicating that I wished to rent said apartment.

6. I received no reply to the said letter.

7. On information and belief, a member of the Fair Housing Committee, Yonkers, also wrote a letter in answer to the said advertisement.

8. On information and belief, the said member of the Fair Housing Committee of Yonkers received a telephone call from one of the respondents inviting him to see the apartment at 32 Purser Place, Yonkers, New York.

9. The respondent who called the member of the Fair Housing Committee informed said member of the location of the said apartment.

10. On or about the 16th day of December 1967, I visited the home of respondents at 32 Purser Place, Yonkers, New York and inquired about the apartment.

11. I was informed that the apartment was empty, but that there were other prospective applicants for the apartment whose letters respondent had received who would be given first preference.

12. On information and belief, on December 16, 1967, subsequent to my visit to respondents, a white person went to 32 Purser Place and spoke to the said respondents.

13. On information and belief, the said white person had not written a letter to the respondents inquiring about the respondents' apartment.

14. On information and belief, respondents showed the apartment to the white person and informed him that the apartment could be rented immediately.

15. On information and belief, one of the respondents told the white person that they had refused to show the apartment to a Negro whose name was Crosby because they did not want to rent to Negroes.

16. On information and belief, on Monday, December 18, 1967 a white person telephoned respondents and was told that the apartment was still available.

17. On information and belief, during the said telephone conversation, respondent Mrs. Malm advised the white person that the apartment could be seen and that a deposit could be left on the apartment if it was found to be satisfactory.

18. I am a Negro. Respondents have refused to rent the said apartment to me because of my color.

STATE OF NEW YORK )
COUNTY OF WEST- ) ss.:
CHESTER

LEROY GEORGE CROSBY , being duly sworn, deposes and says: That he is the Complainant in this proceeding; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Leroy Crosby
LEROY GEORGE CROSBY

Sworn to before me this
16 day of March 1968
City of Yonkers
County of Westchester

Sidney Marion

SIDNEY MARION
NOTARY PUBLIC, State of New York
No. 60-253-[illegible]
Qualified in Westchester County
Term Expires March 30, 19[illegible]
1969

COMMISSION FOR HUMAN RIGHTS

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STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

EDWARD HINES,

Complainant,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

ORIGINAL

AMENDED COMPLAINT

Case No. CH-15362-67

Complainant, Edward Hines, complaining of the respondents alleges:

## THE CHARGE

I charge that Franklyn Malm and Anna F. Malm, the owners of the three-family house located at 32 Purser Place, Yonkers, New York, discriminated against me by refusing to rent or lease and otherwise denying to and withholding from me the third floor, 6-room apartment in the aforementioned premises because of my color, and thereby committing an unlawful discriminatory practice under Section 296.5 of the Law Against Discrimination.

## PARTICULARS

1. At all times hereafter mentioned, respondents Franklyn Malm and Anna F. Malm were the owners of the house located at 32 Purser Place, Yonkers, New York.

2. At the time of the events complained of, I resided at 50 Herriot Street, Yonkers, New York.

3. I am a Negro.

4. On or about the 7th day of December 1967, the following advertisement appeared in the Herald Statesman: "So. Yonkers - 6 room, porch, 3 family house, Adults preferred, Write box HM 44 this newspaper".

5. On information and belief, a member of the Fair Housing Committee, Yonkers, wrote a letter in answer to the said advertisement.

6. On information and belief, the said member of the Fair Housing Committee of Yonkers received a telephone call from one of the respondents inviting him to see the apartment at 32 Purser Place, Yonkers, New York.

7. The respondent who called the member of the Fair Housing Committee informed said member of the location of the said apartment.

8. I was informed by the said member of the Fair Housing Committee

of the location of the said apartment.

9. On or about the 18th day of December 1967, I visited the home of respondents at 32 Purser Place, Yonkers, New York and inquired about the apartment.

10. The time of my visit to 32 Purser Place was at about 6 o'clock p.m.

11. I spoke to Mr. Malm who identified himself as "the owner", and asked about the apartment.

12. Mr. Malm advised me that the apartment had been rented the day before.

13. On information and belief, on Monday, December 18, 1967 at approximately 10:00 p.m. a white person telephoned respondents and was told that the apartment was still available.

14. On information and belief, during the said telephone conversation, respondent Mrs. Malm advised the white person that the apartment could be seen and that a deposit could be left on the apartment if it was found to be satisfactory.

15. I am a Negro.

16. I am a Negro. Respondents have refused to rent the said apartment to me because of my color.

17. I made, signed and filed my original verified complaint herein on December 18, 1967; I am making, signing and filing this amended complaint in accordance to Section 297 of the Law Against Discrimination based on my own knowledge and the knowledge given me by representatives of the Fair Housing Committee of Yonkers.

18. I have not committed any action, civil or criminal based upon the above grievance.

Edward J Hines
Edward Hines

Swern to before me this
5 day of March 1968
Gertrude G King

8

STATE OF NEW YORK )
COUNTY OF WEST- ) ss.:
CHESTER

EDWARD HINES, being duly sworn, deposes and says: That he is the Complainant in this proceeding; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

x Edward J Hines
EDWARD HINES

Sworn to before me this
5th day of March 1968
Gertrude G King

Commissioner of Deeds
City of Yonkers, N. Y.
Term Expires Dec. 31, 1968

Chairman

At a Special Term, Part
thereof, of the Supreme Court
of the State of New York held
in and for the County of
Westchester, at the Courthouse
located at 166 Main Street,
in the City of White Plains,
on the 21st day of ~~January~~ October, 1968

PRESENT:

HON. John P. Donohoe, Justice

Justice

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In the Matter of the Application of the
STATE DIVISION OF HUMAN RIGHTS
Petitioner,

- against -

FRANKLYN MALM and ANNA H. MALM,
Respondents.

ORDER

Index No. 116/1968
85-224

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Petitioner, State Division of Human Rights (formerly the State Commission for Human Rights) having moved this court for an order, a conciliation agreement, set forth in the Stipulation to Consent Order signed by the respondents,

NOW, upon reading and filing the annexed petition of the Division and the conciliation agreement which is deemed to be an order of the Division as set forth in the Stipulation to Consent Order dated June 27, 1968 and on the motion of Henry Spitz, General Counsel to the Division, it is hereby

ORDERED, that petitioner's application be and the same hereby is granted and that the conciliation agreement, be enforced and it is further

ORDERED, that the respondents Franklyn M. Malm and Anna H. Malm, their agents, representatives, servants, employees, successors or assigns shall not refuse to sell, rent or lease any housing accommodation, land or commercial space located in the State of New York and subject to the provisions of the Law Against Discrimination to any person or persons, or illegally refuse to negotiate for the sale, rental or lease of any such housing accommodation, land or commercial space to any person or persons because of the race, creed, color or national origin of such person or persons or represent that any such housing accommodation and/or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise deny or withhold any such housing accommodation, land or commercial space from any person or persons because of the race, creed, color or national origin of such person or persons; and it is further

ORDERED, that the respondents Franklyn Malm and Anna H. Malm, thei agents, employees, representatives, successors or assigns shall take the following affirmative action which in the judgment of the Division will effectuate the purposes od the Human Rights Law:

1. Make any offer for rental, lease or sale of the housing accommodation located at 32 Purser Place, Yonkers, New York, available to all interested persons without regard to the race, creed, color or national origin of such persons.

2. With respect to the housing accommodations located at 32 Purser Place, Yonkers, New York, apply the same standards, terms, conditions and privileges in the rental, lease or sale to all applicants therefor without regard to their race, creed, color or national origin.

3. Send written notice no later than the date that the first oral or written notice is sent to any other rental agency, in the business of securing tenants for apartments, to Fair Housing Committee of Yonkers, 156 North Broadway, Yonkers, New York, at such times up to and including March 31, 1970 when any apartment in 32 Purser Place, Yonkers, New York shall become available for rental. Such notices shall indicate the apartment number and its location, its size, proposed monthly rental, subject to its increases permitted by law, amount of security required, term of lease and date of availability.

   Respondents shall allow said organization at least 10 days time from the sending of such notices to refer interested applicants for such apartments provided that nothing herein shall prevent respondents, after the expiration of the said 10 days, from legally renting such apartment to any person. Respondents shall consider any such referred applicants, along with any other rental applicants, determining acceptability and choosing the successful applicant in accordance with all legal standards.

   A copy of any such notice shall be sent to the Division at 270 Broadway, New York, New York 10007.

4. Make available within a reasonable time to the duly authorized representatives of the State Division of Human Rights such information and documents as may be necessary for said Division to ascertain whether this order is being complied with.

E N T E R

John P. Donohoe
J. S. C.

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ork, } ss.:
ester }

No Fee
Official Use

. Vetrano
~~WARREN~~, Clerk of the County of Westchester, and also Clerk of the
e Courts in and for said County, the same being Courts of record,
ERTIFY That I have compared the preceding with the original.
Petition, Order and Conciliation
State Division of Human Rights vs.
Franklyn Malm and Anna H. Malm
the 21st day of October 1968,
y the same to be a correct transcript therefrom and of the whole of

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, this
6th day of November 1968,

Edward N. Vetrano
Clerk.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

X

STATE DIVISION OF HUMAN RIGHTS :

Petitioner, :

- against - : PETITION

: Index No.

FRANKIYN MALM and ANNA H. MALM, :

Respondents.

X

TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

The State Division of Human Rights (hereinafter the "Division") by Henry Spitz, General Counsel, to the Division, respectfully petitions this court for an order to enforce a conciliation agreement which is deeme to be an order of the Division, has set forth in Stipulation to Consent ar Order, dated June 27, 1968, entered into by respondents with the State Commission for Human Rights (now known as the State Division of Human Righ pursuant to Section 297, subdivision 2 of the Executive Law, Article 15 (formerly known as the Law Against Discrimination, now known as the Human Rights Law), in Commission Case No. CH-15400-68 entitled: State Commissic for Human Rights on the complaint of Shearin Otis Higgs, complainant, agai Franklyn Malm and Anna H. Malm, respondents, Commission Case No. CH-15375- entitled: State Commission for Human Rights on the complaint of Leroy Geo Crosby, complainant, against Franklyn Malm and Anna H. Malm, respondents, Commission Case No. CH-15362-67 entitled: State Commission for Human Righ on the complaint of Edward Hines, complainant, against Franklyn Malm, resp

In support of its petition the Division respectfully shows:

1. The Division is a state agency, that is required and empower to administer and carry out the provisions of the Human Rights Law.

2. The name of the State Commission for Human Rights was chang to the State Division of Human Rights and that of the Law Against Discrimination to the Human Rights Law by Chapter 958 of the Laws of 1968 (effective July 1, 1968).

3. Respondent Franklyn Malm and Anna H. Malm are the owners of premises 32 Purser Place, Yonkers, New York, and manage the aforesaid property in their own behalf.

4. Respondents were represented before the Commission by Martin J. Stamler, Esq. of the law firm, Alder and Alder, Esqs.

5. The pertinent procedings heretofore had in the matter before the Commission for Human Rights in accordance with the procedural requirements of Section 297 of the Executive Law were the following:

On December 18, 1967, Leroy George Crosby did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Leroy George Crosby, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law.

On December 19, 1967, Edward Hines did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Edward Hines, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law.

On January 15, 1968, Shearin Otis Higgs did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent complainant, Shearin Otis Higgs, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law.

Commissioner Bessie Buchanan was duly appointed as the Investigating Commissioner of the said complaints by Robert J. Mangum, Chairman of the Commission. After investigation, Commissioner Buchanan on December 29, 1967 found that probable cause existed to credit the allegations of the Crosby and Hines complaints, and on January 23, 1968 found that probable cause existed to credit the allegations of the Higgs complaint and directed the issuance and service in the name of the Commission, of a written notice together with copies of the complaints as amended requiring respondents to answer the charges of the amended complaints at a hearing before three Hearing Commissioners to be designated by the Chairman and sitting as the Commission at a time and place specified in such notice. Since each of the complaints involved the same respondents, the three cases were consolidated.

Notice and amended complaints were duly served upon the parties herein and issue was joined by the service of an answer by the respondents.

6. On April 18, 1968, the scheduled date of the public hearing herein, respondents herein entered into a conciliation agreement, which is deemed to be an order of the Commission as set forth in the Stipulation to Consent and Order annexed hereto as Exhibit "A", and pursuant to Section 297 of the Executive Law such conciliation agreement includes a provision for the entry in this court of consent decree embodying the terms of the conciliation agreement. The stipulation also provides:

> "4. It is expressly stipulated that the Commission may apply to the Supreme Court of the State of New York for an order containing the provisions set forth in paragraph 6 hereof, without prior notice to the parties, and the parties hereby consent to the making and entry by the Supreme Court of said order."

7. No previous application for the same or similar relief has been made before in court.

WHEREFORE, the State Division of Human Rights respectfully requests that this court enter the order submitted as set forth in the Stipulation to Consent Order, dated June 27, 1968 signed by the respondents herein.

Dated: New York, New York

Henry Spitz
General Counsel
State Division of Human Rights
270 Broadway
New York, N.Y.
Tel. No. 488-5364

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

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STATE COMMISSION FOR HUMAN RIGHTS
on the complaint of
SHEARIN OTIS HIGGS,
Complainant,
- against -
FRANKLYN MALM and ANNA H. MALM,
Respondents.

Complaint Case No. CH-15400-68

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STATE COMMISSION FOR HUMAN RIGHTS
on the complaint of
LEROY GEORGE CROSBY,
Complainant,
- against -
FRANKLYN MALM and ANNA F. MALM,
Respondents.

Complaint Case No. CH-15375-67

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STATE COMMISSION FOR HUMAN RIGHTS
on the complaint of
EDWARD HINES,
Complainant,
- against -
FRANKLYN MALM and ANNA F. MALM,
Respondents.

Complaint Case No. CH-15362-67

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## CONCILIATION AGREEMENT
## with
## STIPULATION TO CONSENT ORDER

WHEREAS, on December 18, 1967, Leroy George Crosby did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Leroy George Crosby, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law, known as the Law Against Discrimination; and

WHEREAS, on December 19, 1967, Edward Hines did make, sign and and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Edward Hines, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law, known as the Law Against Discrimination; and

WHEREAS, on January 15, 1968, Shearin Otis Higgs did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Shearin Otis Higgs, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law, known as the Law Against Discrimination; and

WHEREAS, said complaints were duly assigned to Investigating Commissioner Bessie A. Buchanan; and

WHEREAS, after investigation of each complaint, Commissioner Bessie A. Buchanan found probable cause to credit the allegations of the said complaints; and

WHEREAS, the complainants and respondents desire to dispose of the complaints without formal hearing before three Hearing Commissioners, and agreed to enter into this conciliation agreement pursuant to Section 297.2(a) of the Law Against Discrimination; and

WHEREAS, the respondents Franklin Malm and Anna H. Malm are the owners of premises 32 Purser Place, Yonkers, New York and manage the aforesaid property on their own behalf.

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

1. The parties acknowledge that the State Commission for Human Rights has jurisdiction over the subject matter of this proceeding and the parties hereto and has jurisdiction pursuant to Section 297.2(c) of the Law Against Discrimination to obtain an order of the Supreme Court of the State of New York with provisions as set forth in paragraph 6 hereof.

2. The entire record of this proceeding shall consist of the original verified complaints dated respectively December 18, 1967, December 19, 1967 and January 15, 1968, the determinations of probable cause, the amended

verified complaints, the respondents' answer thereto and this stipulation.

3. The parties for the purpose of conciliating this proceeding and for no other purpose, and the respondents, without admitting any allegations that they have committed any unlawful discriminatory practices, wave their right to a hearing before three Hearing Commissioners as provided for in Section 297.2(b) of the Law Against Discrimination, and wave their right to the making of findings of fact and conclusions of law, and order after hearing, and to all further rights or remedies, and proceedings before the Commission.

4. It is expressly stipulated that the Commission may apply to the Supreme Court of the State of New York for an order containing the provisions set forth in paragraph 6 hereof, without prior notice to the parties, and the parties hereby consent to the making and entry by the Supreme Court of said order.

5. It is further stipulated that after obtaining said court order, the Commission will serve copies thereof upon the parties by certified mail. In the event that the parties violate said court order, the Commission may commence a proceeding to punish for contempt upon the giving of such notice as may be required by the Law.

6. The parties consent to the entry of an order by the Supreme Court containing the following ordering provisions:

ORDERED, that the respondents Franklyn Malm and Anna H. Malm, their agents, representatives, servants, employees, successors or assigns shall not refuse to sell, rent or lease any housing accommodation, land or commercial space located in the State of New York and subject to the provisions of the Law Against Discrimination to any person or persons, or illegally refuse to negotiate for the sale, rental or lease of any such housing accommodation, land or commercial space to any person or persons because of the race, creed, color or national origin of such person or persons or represent that any such housing accommodation and/or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise deny or withhold any such housing accommodation, land or commercial space from any person or persons because of the race, creed, color or national origin of such person or persons; and it is further

ORDERED, that the respondents Franklyn Malm and Anna H. Malm, their agents, employees, representatives, successors or assigns shall take the following affirmative action which in the judgment of the Commission will effectuate the purposes of the Law Against Discrimination:

1. Make any offer for rental, lease or sale of the housing accommodation located at 32 Purser Place, Yonkers, New York, available to all interested persons without regard to the race, creed, color or national origin of such persons.

2. With respect to the housing accommodations located at 32 Purser Place, Yonkers, New York, apply the same standards, terms, conditions and privileges in the rental, lease or sale to all applicants therefor without regard to their race, creed, color or national origin.

3. Send written notice no later than the date that the first oral or written notice is sent to any other rental agency, in the business of securing tenants for apartments, to Fair Housing Committee of Yonkers, 156 North Broadway, Yonkers, New York, at such times up to and including March 31, 1970 when any apartment in 32 Purser Place, Yonkers, New York shall become available for rental. Such notices shall indicate the apartment number and its location, its size, proposed monthly rental, subject to its increases permitted by law, amount of security required, term of lease and date of availability.

   Respondents shall allow said organization at least 10 days time from the sending of such notices to refer interested applicants for such apartments provided that nothing herein shall prevent respondents, after the expiration of the said 10 days, from legally renting such apartment to any person. Respondents shall consider any such referred applicants, along with any other rental applicants, determining acceptability and choosing the successful applicant in accordance with all legal standards.

   A copy of any such notice shall be sent to the Commission at 270 Broadway, New York, New York 10007.

4. Make available within a reasonable time to the duly authorized representatives of the State Commission for Human Rights such information and documents as may be necessary for said Commission to ascertain whether this order is being complied with.

Rupert Ruiz

Dated: New York, New York
June 27, 1968

Franklyn Malm
Franklyn Malm, Respondent

Francis X. Giaccone
Presiding Hearing Commissioner

Anna H Malm
Anna H. Malm, Respondent

Leroy G. Crosby
Leroy G. Crosby, Complainant

Adler & Adler, Esqs.
By: Martin J. Stamler
Martin J. Stamler, Attorney
for Respondents

Shearin O Higgs
Shearin Otis Higgs, Complainant

Carl Rachlin
Carl Rachlin, Attorney
for Complainants

Edward Hines, Complainant

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

STATE COMMISSION FOR HUMAN RIGHTS
on the complaint of
SHEARIN OTIS HIGGS,
Complainant,
- against -
FRANKLYN MALM and ANNA H. MALM,
Respondents.

Complaint Case No. CH-15400-68

STATE COMMISSION FOR HUMAN RIGHTS
on the complaint of
LEROY GEORGE CROSBY,
Complainant,
- against -
FRANKLYN MALM and ANNA F. MALM,
Respondents.

Complaint Case No. CH-15375-67

STATE COMMISSION FOR HUMAN RIGHTS
on the complaint of
EDWARD HINES,
Complainant,
- against -
FRANKLYN MALM and ANNA F. MALM,
Respondents.

Complaint Case No. CH-15362-67

## CONCILIATION AGREEMENT
## with
## STIPULATION TO CONSENT ORDER

WHEREAS, on December 18, 1967, Leroy George Crosby did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Leroy George Crosby, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law, known as the Law Against Discrimination; and

WHEREAS, on December 19, 1967, Edward Hines did make, sign and and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Edward Hines, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law, known as the Law Against Discrimination; and

WHEREAS, on January 15, 1968, Shearin Otis Higgs did make, sign and file a verified complaint with the State Commission for Human Rights which charges the respondents, above-named, with having committed an unlawful discriminatory practice in that they refused to rent to complainant, Shearin Otis Higgs, a housing accommodation located at 32 Purser Place, Yonkers, New York, because complainant is a Negro, in violation of Section 296.5(a)(1) of Article 15 of the Executive Law, known as the Law Against Discrimination; and

WHEREAS, said complaints were duly assigned to Investigating Commissio Bessie A. Buchanan; and

WHEREAS, after investigation of each complaint, Commissioner Bessie A. Buchanan found probable cause to credit the allegations of the said complaints; and

WHEREAS, the complainants and respondents desire to dispose of the complaints without formal hearing before three Hearing Commissioners, and agreed to enter into this conciliation agreement pursuant to Section 297.2(a) of the Law Against Discrimination; and

WHEREAS, the respondents Franklin Malm and Anna H. Malm are the owner of premises 32 Purser Place, Yonkers, New York and manage the aforesaid property on their own behalf.

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

1. The parties acknowledge that the State Commission for Human Rights has jurisdiction over the subject matter of this proceeding and the parties hereto and has jurisdiction pursuant to Section 297.2(c) of the Law Against Discrimination to obtain an order of the Supreme Court of the State of New York with provisions as set forth in paragraph 6 hereof.

2. The entire record of this proceeding shall consist of the original verified complaints dated respectively December 18, 1967, December 19, 1967 and January 15, 1968, the determinations of probable cause, the amended

verified complaints, the respondents' answer thereto and this stipulation.

3. The parties for the purpose of conciliating this proceeding and for no other purpose, and the respondents, without admitting any allegations that they have committed any unlawful discriminatory practices, wave their right to a hearing before three Hearing Commissioners as provided for in Section 297.2(b) of the Law Against Discrimination, and wave their right to the making of findings of fact and conclusions of law, and order after hearing, and to all further rights or remedies, and proceedings before the Commission.

4. It is expressly stipulated that the Commission may apply to the Supreme Court of the State of New York for an order containing the provisions set forth in paragraph 6 hereof, without prior notice to the parties, and the parties hereby consent to the making and entry by the Supreme Court of said order.

5. It is further stipulated that after obtaining said court order, the Commission will serve copies thereof upon the parties by certified mail. In the event that the parties violate said court order, the Commission may commence a proceeding to punish for contempt upon the giving of such notice as may be required by the Law.

6. The parties consent to the entry of an order by the Supreme Court containing the following ordering provisions:

ORDERED, that the respondents Franklyn Malm and Anna H. Malm, their agents, representatives, servants, employees, successors or assigns shall not refuse to sell, rent or lease any housing accommodation, land or commercial space located in the State of New York and subject to the provisions of the Law Against Discrimination to any person or persons, or illegally refuse to negotiate for the sale, rental or lease of any such housing accommodation, land or commercial space to any person or persons because of the race, creed, color or national origin of such person or persons or represent that any such housing accommodation and/or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise deny or withhold any such housing accommodation, land or commercial space from any person or persons because of the race, creed, color or national origin of such person or persons; and it is further

ORDERED, that the respondents Franklyn Malm and Anna H. Malm, their agents, employees, representatives, successors or assigns shall take the following affirmative action which in the judgment of the Commission will effectuate the purposes of the Law Against Discrimination:

1. Make any offer for rental, lease or sale of the housing accommodation located at 32 Purser Place, Yonkers, New York, available to all interested persons without regard to the race, creed, color or national origin of such persons.

2. With respect to the housing accommodations located at 32 Purser Place, Yonkers, New York, apply the same standards, terms, conditions and privileges in the rental, lease or sale to all applicants therefor without regard to their race, creed, color or national origin.

3. Send written notice no later than the date that the first oral or written notice is sent to any other rental agency, in the business of securing tenants for apartments, to Fair Housing Committee of Yonkers, 156 North Broadway, Yonkers, New York, at such times up to and including March 31, 1970 when any apartment in 32 Purser Place, Yonkers, New York shall become available for rental. Such notices shall indicate the apartment number and its location, its size, proposed monthly rental, subject to its increases permitted by law, amount of security required, term of lease and date of availability.

   Respondents shall allow said organization at least 10 days time from the sending of such notices to refer interested applicants for such apartments provided that nothing herein shall prevent respondents, after the expiration of the said 10 days, from legally renting such apartment to any person. Respondents shall consider any such referred applicants, along with any other rental applicants, determining acceptability and choosing the successful applicant in accordance with all legal standards.

   A copy of any such notice shall be sent to the Commission at 270 Broadway, New York, New York 10007.

4. Make available within a reasonable time to the duly authorized representatives of the State Commission for Human Rights such information and documents as may be necessary for said Commission to ascertain whether this order is being complied with.

Dated: New York, New York

Franklyn Malm
Franklyn Malm, Respondent

Francis X. Giaccone
Presiding Hearing Commissioner

Anna H Malm
Anna H. Malm, Respondent

Leroy G. Crosby, Complainant

Adler & Adler, Esqs.

By: J Stamler
Martin J. Stamler, Attorney
for Respondents

Shearin Otis Higgs, Complainant

STATE OF NEW YORK:EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

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X

STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

EDWARD HINES,

Complainant,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

X

AMENDED COMPLAINT

Case No. CH-15362-67

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Complainant, Edward Hines, complaining of the respondents alleges:

## THE CHARGE

I charge that Franklyn Malm and Anna F. Malm, the owners of the three-family house located at 32 Purser Place, Yonkers, New York, discriminated against me by refusing to rent or lease and otherwise denying to and withholding from me the third floor, 6-room apartment in the aforementioned premises because of my color, and thereby committing an unlawful discriminatory practice under Section 296.5 of the Law Against Discrimination.

## PARTICULARS

1. At all times hereafter mentioned, respondents Franklyn Malm and Anna F. Malm were the owners of the house located at 32 Purser Place, Yonkers, New York.

2. At the time of the events complained of, I resided at 50 Herriot Street, Yonkers, New York.

3. I am a Negro.

4. On or about the 7th day of December 1967, the following advertisement appeared in the Herald Statesmen: "So. Yonkers - 6 room, porch, 3 family house, Adults preferred, WRite box HM 44 this newspaper".

5. On information and belief, a member of the Fair Housing Committee, Yonkers, wrote a letter in answer to the said advertisement.

6. On information and belief, the said member of the Fair Housing Committee of Yonkers received a telephone call from one of the respondents inviting him to see the apartment at 32 Purser Place, Yonkers, New York.

7. The respondent who called the member of the Fair Housing Committee informed said member of the location of the said apartment

of the location of the said apartment.

9. On or about the 18th day of December 1967, I visited the home of respondents at 32 Purser Place, Yonkers, New York and inquired about the apartment.

10. The time of my visit to 32 Purser Place was at about 6 o'clock p.m.

11. I spoke to Mr. Malm who identified himself as "the owner", and asked about the apartment.

12. Mr. Malm advised me that the apartment had been rented the day before.

13. On information and belief, on Monday, December 18, 1967 at approximately 10:00 p.m. a white person telephoned respondents and was told that the apartment was still available.

14. On information and belief, during the said telephone conversation, respondent Mrs. Malm advised the white person that the apartment could be seen and that a deposit could be left on the apartment if it was found to be satisfactory.

15. I am a Negro.

16. I am a Negro. Respondents have refused to rent the said apartment to me because of my color.

17. I made, signed and filed my original verified complaint herein on December 18, 1967; I am making, signing and filing this amended complaint in accordance to Section 297 of the Law Against Discrimination based on my own knowledge and the knowledge given me by representatives of the Fair Housing Committee of Yonkers.

18. I have not committed any action, civil or criminal based upon the above grievance.

Edward Hines

Sworn to before me this
day of

STATE OF NEW YORK )
COUNTY OF WEST- ) ss.:
CHESTER

EDWARD HINES , being duly sworn, deposes and says: That he is the Complainant in this proceeding; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
day of 19

EDWARD HINES

STATE OF NEW YORK:EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

STATE COMMISSION FOR HUMAN RIGHTS

on the complaint of

LEROY GEORGE CROSBY,

Complainant,

- against -

FRANKLYN MALM and ANNA F. MALM,

Respondents.

AMENDED COMPLAINT

Case No. CH-15375-67

Complainant, Leroy George Crosby, complaining of the respondents alleges:

THE CHARGE

I charge that Franklyn Malm and Anna F. Malm, the owners of the three-family house located at 32 Purser Place, Yonkers, New York, discriminated against me by refusing to rent or lease and otherwise denying to and withholding from me the third floor, 6-room apartment in the aforementioned premises because of my color, and thereby committing an unlawful discriminatory practice under section 296.5 of the Law Against Discrimination.

PARTICULARS

1. At all times hereafter mentioned, respondents Frankly Malm and Anna F. Malm were the owners of the house located at 32 Purser Place, Yonkers, New York.

2. At the time of the events complained of, I resided at 122 Woodworth Avenue, Yonkers, New York.

3. I am a Negro.

4. On or about the 7th day of December 1967, the following advertisement appeared in the Herald Statesmen: "So. Yonkers - 6 room, porch, 3 family house, Adults preferred, Write box HM 44 this newspaper".

5. On or about December 7, 1967 I wrote a letter in answer to said advertisement indicating that I wished to rent said apartment.

6. I received no reply to the said letter.

7. On information and belief, a member of the Fair Housing Committee, Yonkers, also wrote a letter in answer to the said advertisement.

8. On information and belief, the said member of the Fair Housing Committee of Yonkers received a telephone call from one of the respondents inviting him to see the apartment at 32 Purser Place, Yonkers, New York.

9. The respondent who called the member of the Fair Housing Committee informed said member of the location of the said apartment.

10. On or about the 16th day of December 1967, I visited the home of respondents at 32 Purser Place, Yonkers, New York and inquired about the apartment.

11. I was informed that the apartment was empty, but that there were other prospective applicants for the apartment whose letters respondent had received who would be given first preference.

12. On information and belief, on December 16, 1967, subsequent to my visit to respondents, a white person went to 32 Purser Place and spoke to the said respondents.

13. On information and belief, the said white person had not written a letter to the respondents inquiring about the respondents' apartment.

14. On information and belief, respondents showed the apartment to the white person and informed him that the apartment could be rented immediately.

15. On information and belief, one of the respondents told the white person that they had refused to show the apartment to a Negro whose name was Crosby because they did not want to rent to Negroes.

16. On information and belief, on Monday, December 18, 1967 a white person telephoned respondents and was told that the apartment was still available.

17. On information and belief, during the said telephone conversation, respondent Mrs. Malm advised the white person that the apartment could be seen and that a deposit could be left on the apartment if it was found to be satisfactory.

18. I am a Negro. Respondents have refused to rent the said apartment to me because of my color.

19. I made, signed and filed my original verified complaint herein on December 18, 1967; I am making, signing and filing this amended complaint in accordance to Section 297 of the Law Against Discrimination based on my own knowledge and the knowledge given me by representatives of the Fair Housing Committee of Yonkers.

20. I have not committed any action, civil or criminal based upon the above grievance.

Leroy George Crosby

Sworn to before me this
day of

19. I made, signed and filed my original verified complaint herein on December 18, 1967; I am making, signing and filing this amended complaint in accordance to Section 297 of the Law Against Discrimination based on my own knowledge and the knowledge given me by representatives of the Fair Housing Committee of Yonkers.

20. I have not committed any action, civil or criminal based upon the above grievance.

Leroy George Crosby

Sworn to before me this
day of

STATE OF NEW YORK )
COUNTY OF WEST- ) ss.:
CHESTER )

LEROY GEORGE CROSBY , being duly sworn, deposes and says: That he is the Complainant in this proceeding; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
day of 19

LEROY GEORGE CROSBY

7. The respondent who called the member of the Fair Housing Committee informed said member of the location of the said apartment.

8. I was informed by the said member of the Fair Housing Committee of the location of the said apartment.

9. On or about the 16th day of December 1967, I visited the home of respondents at 32 Purser Place, Yonkers, New York and inquired about the apartment.

10. I was shown the apartment by Mr. Malm but was told that he had a waiting list.

11. Mr. Malm questioned me as to my occupation.

12. Mr. Malm asked me why my wife and I wanted such a large apartment.

13. Mr. Malm denied me the opportunity to leave a deposit on the apartment.

14. I was told by the respondent Mr. Malm that the rental might be more than $92 as there would be some cost in fixing up the apartment.

15. On information and belief, on Monday December 18, 1967 a white person telephoned respondents and was told that the apartment was still available.

16. On information and belief, during the said telephone conversation, respondent Mrs. Malm advised the white person that the apartment could be seen and that a deposit could be left on the apartment if it was found to be satisfactory.

17. I am a Negro. Respondents have refused to rent the said apartment to me because of my color.

18. I made, signed and filed my original verified complaint herein on December 18, 1967; I am making, signing and filing this amended complaint in accordance to Section 297 of the Law Against Discrimination based on my own knowledge and the knowledge given me by representatives of the Fair Housing Committee of Yonkers.

19. I have not committed any action, civil or criminal based upon the above grievance.

Shearin Otis Higgs

STATE OF NEW YORK )
COUNTY OF WEST- ) ss.:
CHESTER

SHEARIN OTIS HIGGS , being duly sworn, deposes and says: That he is the Complainant in this proceeding; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
day of 19

SHEARIN OTIS HIGGS

Crosby File

Sent on 12/7/67

Copy

10 Euclid Ave
Yonkers NY

Dec 6 1967

Box Hm 44
Herald Statesman
Yonkers

Gentleman:

Re your advertisement in today's Herald Statesman for a 6-room apt with porch in South Yonkers, my husband & I are interested in knowing the rental and location.

You may write us at the above address or telephone us at YO 5-5304 and we can discuss the possibility of it meeting our requirements.

Thank you.

Mrs H. P. Trommer

for Mackay & Crosby

Crosby File

Box HM 44
Herald Statesman

Dec 7, 1967

Dear Sir

We are interested in your 6 room apartment. We have three Teenagers and would like to see the apartment advertised in South Yonkers.

Please Call us at my daughter's house, 423-3870 or write us at 122 Woodworth Ave, Yonkers.

We are good tenants and would like a nicer place.

Yours truly,

Mrs. Leroy Crosby
(Josephine)

Girl 13 yrs
Boy 15 "
Girl 16 "
NOT on orig ltr

Crosby File
apply to
Heggs &
Hines

XXXXXXXXXXXXXXXX 156 No. Broadway

**** 9-8595

December 16, 1967

Mr. Harry Anderson, Director
State Comm. for Human Rights
61 Mitchell Place
White Plains, New York

Re: Crosby vs. Malm, 32 Purser Pl, Yonkers

Dear Mr. Anderson:

The following information applies to the above complaint, and any other complaints against the same respondent and premises.

On Saturday, Dec. 16, 1967, at approximately noon, our member, Mr. Peter Hemingson, 527 Riverdale Ave., Yonkers, 423-2065, went to the above premises and inquired from Mr. and Mrs. Malm with regard to the 6-room apartment for rent.

The Malms showed him the apartment, renting for $92 per month, rent controlled, on the 3rd floor of a 3-family house at 32 Purser Place, Yonkers. The apartment was available to him if he wished it.

Mr. and Mrs. Malm advised Mr. Hemingson that a Negro family by the name of Crosby had already tried to rent the apartment, but that they refused him as they didn't want to rent to Negroes and wouldn't show him the apartment. They advised that they had received a letter from the Crosby's asking for the apartment in answer to their advertisement, but tore it up as they felt he was Negro. Mr. Malm said he knew Mr. Crosby as the man who worked at Sears Roebuck who waited on him. The Malms advised Mr. Hemingson they had turned down another Negro family also. They said they had put curtains up in the 3-rd floor apartment windows after the Crosby's left, so that the apartment would not look empty from the street.

No questions were asked Mr. Hemingson regarding his income or occupation. He volunteered before leaving that he worked downtown for 1st Natl City Bank, but gave no information as to what kind of work or his income.

Please do not hesitate to contact Mr. Hemingson or ourselves for further information. We ask that you make arrangements to get an injunction immediately on this apartment, and also that the information concerning Mr. Hemingson be held confidential as much as possible as he will be trying to negotiate for the apartment pending the procuring of the injunction.

Yours truly,

YONKERS FAIR HOUSING COMMITTEE

FOR THE EXECUTIVE BOARD

Hines File

XXXXXXXXXXXXXXX 156 No. Broadway
10701
XXXXXX YO 9-8595

December 19, 1967

Mr. Harry Anderson, Director
State Comm. for Human Rights
61 Mitchell Place
White Plains, New York

Crosby, etc. Hines + Higgs
Re: 32 Purser Place, Yonkers,
Franklyn Malm, et al

Dear Mr. Anderson:

Please apply this information to all of the complaints on the above premises and respondents.

On Monday, December 18, 1967, approximately 10:00 p.m., Mr. Hemingson (known as Mr. Henderson) telephone Mr. & Mrs. Malm. He inquired if the apartment were still available and if his wife could leave a deposit on it the next day if she liked the apartment.

Mrs. Malm advised that the apartment was still available; that his wife could come and see it the next day; and that if she liked the apartment, she would be able to leave a deposit.

For your inxxx information, Mr. and Mrs. Malm never inquired as to Mr. "Henderson's" address or telephone.

May we ask that the complaints in this matter receive your immediate attention? We would suggest your consideration of obtaining an injunction to hold the premises for the complainants.

Thank you for your prompt attention.

Yours truly,

GL;s

YONKERS FAIR HOUSING COMMITTEE

FOR THE EXECUTIVE BOARD

Higgs File

XXXXXXXXXXXXXXX 156 No. Broadway
10701
xxxxxxYO 9-8595

December 20, 1967

Mr. Harry Anderson, Director
State Comm. for Human Rights
61 Mitchell Place
White Plains, New York

Re: Higgs vs. Malm

Dear Mr. Anderson:

A complaint is in the mail to you, outlining the experiences of Mr. Shearin Otis Higgs in trying to apply for the 6-room apartment at 32 Purser Place, Yonkers, on Saturday, Dec. 16, 1967.

Please apply the subsequent experience of his wife, Mrs. Belinda Higgs, in trying to inspect and rent the aforesaid apartment.

On Tuesday, December 19, 1967 at about 9:00 p.m., Mrs. Higgs went to 32 Purser Place. Mr. and Mrs. Malms were both present. Mrs. Malms refused to show the apartment, claiming she had no keys. She advised that the apartment had been rented two days prior, and that the rental of the apartment was not being disclosed, although she expected that it would be increased because of added costs. Mrs. Malm admitted under questioning by Mrs. Higgs that she did have the key after all, but refused to show the apartment "because the people's things were still there and it wouldn't be right".

You will recall that we telephoned you yesterday, and advised that the apartment had been offered as available to our Caucasian member very late Monday night, Dec. 18; this was after Mr. Hines, a Negro, had been told the apartment was already rented the day before.

Your prompt action to hold this apartment vacant pending determination by the Commission would be appreciated.

Yours truly,

YONKERS FAIR HOUSING COMMITTEE

SWT:1

FOR THE EXECUTIVE BOARD

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS
61 MITCHELL PLACE, WHITE PLAINS, N. Y. 10601
WH 9-4394

ROBERT J. MANGUM
CHAIRMAN
BERNARD KATZEN
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BESSIE A. BUCHANAN
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J. EDWARD CONWAY
FRANCIS X. GIACCONE
LLOYD L. HURST
DORTHY BELL LAWRENCE
RUPERTO RUIZ

December 21, 1967

Edward Hines vs.
Franklin Malm

Mrs. Gloria Lundberg
Fair Housing Committee
156 North Broadway
Yonkers, New York

Dear Mrs. Lundberg:

This will serve to confirm my telephone call a few minutes ago to your office.

I spoke to a female who informed me that your office was closed. I gave her the following message:

> "A conference has been arranged for 11 a.m., December 22, 1967, in the White Plains office of the Commission in reference to the complaint filed by Edward Hines against Franklin Malm, [illegible] located at 2 Purser Place, Yonkers, N. Y.
>
> Can you please contact Mr. Hines so that he and a representative of your organization might be present."

message re confom, 12/22 Rec'd on 12/25/68

Very truly yours,

Harry Anderson
Director
Region III

HA:hms

Hines File

YONKERS FAIR HOUSING COMMITTEE
156 NORTH BROADWAY
YONKERS, NEW YORK, 10701
YO 9-8595

January 7, 1968

Mr. Harry Anderson
State Commission for Human Rights
61 Mitchell Place
White Plains, New York

Dear Mr. Anderson,

On Wednesday, January 3, 1968, at about noon I called your office and spoke with Mrs. DeGeorge. I explained that I was calling with regard to the Crosby vs. Malm and Hines Vs. Malm cases. Both Mr. Hines and Mr. Crosby were called the week previous (Mr. Crosby's daughter, Mrs. Santos answering for him) by a woman who had given her name (which Mr. Hines and Mrs. Santos couldn't recall) and said that she was a representative of the State Commission for Human Rights and requested a lot of personal information about them which they gave.

Our concern was mainxly whether or not the person who had called was indeed a representative of your office and inquiring in an official capacity, since we would not like to think that anyone was illegally representing herself as a member of the State Commission.

If, as we hope, the person was a member of your office, please advise us why such information was necessary and if equally detailed personal information was requested of the respondents in the dase?

Thank you.

Sincerely yours,

For the Executive Board

Hines File

YONKERS FAIR HOUSING COMMITTEE
156 NORTH BROADWAY
YONKERS, NEW YORK, 10701
YO 9-8595

January 7, 1968

Mr. Harry Anderson
State Commission for Human Rights
61 Mitchell Place
White Plains, New York

Dear Mr. Anderson,

On Wednesday, January 3, 1968, at about noon I called your office and spoke with Mrs. DeGeorge. I explained that I was calling with regard to the Crosby vs. Malm and Hines Vs. Malm cases. Both Mr. Hines and Mr. Crosby were called the week previous (Mr. Crosby's daughter, Mrs. Santos answering for him) by a woman who had given her name (which Mr. Hines and Mrs. Santos couldn't recall) and said that she was a representative of the State Commission for Human Rights and requested a lot of personal information about them which they gave.

Our concern was mainxly whether or not the person who had called was indeed a representative of your office and inquiring in an official capacity, since we would not like to think that anyone was illegally representing herself as a member of the State Commission.

If, as we hope, the person was a member of your office, please advise us why such information was necessary and if equally detailed personal information was requested of the respondents in the dase?

Thank you.

Sincerely yours,

For the Executive Board

File Copy

Hines vs Malm

XXXXXXXXXXXXX 156 NORTH BROADWAY
10701

February 8, 1968

Mr. Amos H. Carnegie, Attorney
State Commission for Human Rights
270 Broadway
New York, New York 10007

Dear Mr. Carnegie,

This is to confirm our conversations of yesterday concerning the cases filed against Franklyn Malm by Higgs, Hines and Crosby. You had informed me that amended complaints were being sent to the complainants for their signature and verification before a notary public, and indicated the importance of this being done promptly. To my request that copies of the amended complaints be sent to our office, you indicated that you would do so.

You also informed me that the date of the public hearing on these cases would be on March 4 and 5 at 270 Broadway. I immediately requested that the place be changed to Yonkers since all complainants, witnesses, and even the respondent reside in Yonkers. You told me you would pass my request on to the proper individuals.

We are in receipt of your letter informing us of the upcoming public hearing on February 20, 1968 xf concerning the case of Oliver v. Candlewood, Case No. CH-14828-67. Thank you very much.

Very truly yours,

For the Executive Board

Hines File

-------------- 156 N. Broadway
10701

February 9, 1968

Mr. Saal Lesser, Exec. Dir.
State Comm. for Human Rights
270 Broadway
New York, New York 100007

Re: Crosby, Hines & Higgs vs.
Franklyn Main, et al

Dear Mr. Lesser:

We are in receipt today of copies of the amended complaints on the above cases.

We note that included is information regarding the fact that the Yonkers Fiar Housing Committee wrote to the Box Number in the advertisement, received an answer, and furnished the complainants [illegible] with the address.

We strongly protest the inclusion of our procedures in the complaint, feeling it is unnecessary for the successful determination of this case inasmuch as Mr. Hemingson, our verifier, will testify that the respondent knew the Crosby letter was from Negroes and destroyed it for that reason, and further indicated that Negroes were not welcome as tenants.

Our success in our operation depends upon the confidentiality of our procedures...thus releasing this information as to how we ascertain addresses, etc., can only inhibit and discourage our successes.

We therefore request that Paragraphs 7, 8 and 9 be deleted from the Amended Complaint, and a new amended complaint be prepared for Crosby; Paragraphs 5,6,7 and 8 in the Higgs complaint; and Paragraphs 5, 6, 7 and 8 in the Hines complaint be omitted and new amended complaints be prepared for the complainant's signatures.

Yours truly,
YONKERS FAIR HOUSING COMMITTEE

GL:swt

FOR THE EXECUTIVE BOARD

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS
270 BROADWAY, NEW YORK, N. Y. 10007

ROBERT J. MANGUM
CHAIRMAN
BERNARD KATZEN
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FRANCIS X. GIACCONE
LLOYD L. HURST
DOROTHY BELL LAWRENCE
RUPERTO RUIZ

2/26/68

February 21, 1968

Mrs. Gloria Lundberg
The Fair Housing Committee of Yonkers
156 North Broadway
Yonkers, New York 10701

Re: Crosby v. Malm, CH-15375-67
Hines v. Malm, CH-15362-67
Higgs v. Malm, CH-15400-68

Dear Mrs. Lundberg:

Your letter of February 9, 1968 concerning the above cases, has been discussed with Mr. Amos Carnegie of our legal staff who is the trial attorney handling the above-listed cases. I understand that he has spoken to you about them and has requested your cooperation in getting the complainants to sign the amended complaints.

According to our legal division, the paragraphs of the complaint to which you object appear to be true in fact. Evidently, the basis of your objection is the desire to keep certain of your procedures from being made public. It is Mr. Carnegie's professional judgment that the facts set forth in the particular paragraphs must be alleged and proved in order to apply a connection between the advertisement and the visits of the complainants to the respondent. Section 297.1 of the Law Against Discrimination requires that the complaint "shall set forth the particulars thereof and contain such other information as may be required by the Commission."

I understand that Mr. Carnegie initially spoke to you prior to applying for an injunction in the Crosby matter, and at that time requested certain information from you so that the court would be provided a complete and sequential set of facts as a basis for its determination. At that time you provided him with the information that he had requested. A copy of the injunction papers was served on the respondents. Accordingly, the participation of the Yonkers Fair Housing Committee already has been divulged to the Supreme Court and the respondents.

the legal division urges you, therefore, to secure the complaint signatures and verifications of the complaints as presently drafted.

I would think that, for the future, if an organization's procedures are not germane to the case there would be no necessity for including them in the case record.

With all good wishes.

Sincerely yours,

/S/

Saul D. Lesser

February 26, 1968

Adler & Adler, Esqs.
20 South Broadway
Yonkers, New York, 10701

Attn: Martin J. Stamler

Re: Higgs vs. Malm
Case No. CH 1-5400-68
Hines vs. Malm
Case No. CH1536267
Crosby vs. Malm
Case No. CH 15375-67

Dear Sir:

Reference is made to our telephone converstions of last week and also of today, in which I informed you that the complaints in the above captioned matters had been amended and had been mailed to the respective complainants for their duly acknowledged signatures. As yet the said complaints have not been returned to me.

As I pointed out to you, the public hearing in the above captioned matters has been shceduled for the 4th and possibly the 5th of March, 1968, at the Common Council Chambers, City Hall, Yonkers, New York. I further pointed out to you that the Respondents are entitled to be served with a Notice of Hearing and Verified Complaints fifteen days prior to the date of the hearing. In addition Respondents must file a written verified answer to the complaints. It is rather apparent that if the hearing is to be held on March 4th, which is next Monday, then the requirement of giving fifteen days notice cannot be complied with.

Accordingly, I am faced with two alternatives.

1) To schedule the hearing in the above captioned matters to some future date which shall depend upon the availability of the Hearing Commissioners.

2) To request that the fifteen days notice requirement be waived, and that the enclosed stipulation to that effect be signed by you on behalf of your clients.

It is hoped that the second alternative be chosen so tha this case can be disposed of as quickly as possible.

Please advise the undersigned immediately of your decision in this matter.

Very truly yours,

Amos H. Carnegie
Attorney

AHC/lb
enc.

**SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY** inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

June 12, 1968

Mrs. Gloria Lundberg
5618 Mosholu Avenue
Bronx, New York 10471

Re: Higgs, Crosby, and Hines v. Malm

Dear Mrs. Lundberg:

Have enclosed the conciliation agreement per our telephone conversation of June 12, 1968. Please have the three complainants sign the agreement and return it to Amos Carnegie,Esq., at the State Commission for Human Rights.

As I mentioned in our telephone conversation, we hope to render further legal assistance this summer.

Sincerely yours,
Richard M Klein
Richard M. Klein

ENC.

*Contributions are deductible for income tax purposes*

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STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
270 BROADWAY, NEW YORK, N. Y. 10007

ROBERT J. MANGUM
COMMISSIONER

December 19, 1968

Carl Rachlin, Esq.
164 Madison Avenue
New York, New York

Re: Hines, Crosby & Higgs v. Malm
Case Nos. CH-15362-67
CH-15375-67
CH-15400-67

Dear Mr. Rachlin:

Enclosed please find three copies of the Court decree in the above-captioned matters. Please excuse the delay.

Best wishes for a Happy Holiday Season.

Very truly yours,

Amos H Carnegie Jr

Amos H. Carnegie, Jr.
Attorney

AHC/ab
enclosures 3

Filed SCHR
Hand delivered
270 Broadway
12/22/67

Mr. Leroy Crosby

Mr. & Mrs. Franklyn Malm

Leroy Crosby
122 Woodworth Avenue, Yonkers, N.Y.
Mr. and Mrs. Malm, et al
32 Purser Place, Yonkers, N.Y.

Mrs.
(daughter) Santos
423-3870

YO 9-2125

x

Saturday, December 16, 1967 and continuing thereafter withholding available accommodations; refusal to rent

X X

1. The following advertisement appeared in the Herald States man on Thursday, Dec. 7, 1967: "So.Yonkers-6 rooms,porch,3 family house, Adults preferred, Write Box HM44 this newspaper".

2. I received no answer to my letter written in answer to this advertisement, so on Saturday, December 16, 1967, in the forenoon, Iwent to 32 Purser Place and inquired regarding the 6-room apartment.

3. Mr. Malm advised that there was an empty apartment. He said he had mny letters in answer to his advertisement and they would be given the opportunity for the apartment first. He said he had a family coming to see the apartment that monring, and did not show it to me.

4. Mr. Malm said he would take my name and address, and did so.

5. I am a Negro, and believe that this apartment was denied to me because of that fact, in violation of the MetcalfBaker law.

Rec'd 2/9/68

## DETERMINATION AND ORDER AFTER INVESTIGATION

Case No. CH-15375-67: Leroy George Crosby vs Franklyn Malm, Sr., and
Anna H. Malm

: : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :

12/22/67

Complainant, a Negro, filed a verified complaint with the New York State Commission for Human Rights against the above-named respondents, charging respondents with an unlawful discriminatory practice relating to a housing accommodation, in violation of the New York Law Against Discrimination.

Briefly, complainant alleges that in response to a newspaper advertisement of December 7, 1967, offering a six-room apartment, he wrote to respondents. Having received no reply, he visited the premises on December 16, 1967, and was told other responses for the apartment had been received. Complainant was not permitted to see the apartment, and he believes he was refused an available apartment because of his race and color.

The facts gathered during the course of the investigation conducted herein support a finding of probable cause to credit the allegations of the specific complaint. Accordingly, I do so find.

Pursuant to Section 297.2(b) of the Law Against Discrimination, this matter is ordered for public hearing.

Dated: December 29, 1967

Bessie A. Buchanan
Investigating Commissioner

To: Mr. Leroy George Crosby, Complainant
122 Woodworth Avenue
Yonkers, New York

Mr. Franklyn Malm, Sr., Respondent
32 Purser Place
Yonkers, New York

Mrs. Anna H. Malm, Respondent
32 Purser Place
Yonkers, New York

Hines File
Filed 12/20/67
by Hand - WP.

Mr. Edward Hines

Mr. Franklyn Malm

Edward Hines

50 Herriot Street, Yonkers, N.Y. Yo3-7612

Mr. Franklyn Malm

32 Purser Place, Yonkers, N.Y. YO 9-2125

X Monday, Dec. 18, 1967 and continuing thereafter refusing me rental accommodations; withholding information,

X X

1. On Monday, Dec. 18, 1967, at approx. 6 P.M. I went to 32 Purser Place, Yonkers, to inquire about the 6-room apartment on the 3rd floor.

2. I spoke to Mr. Malm, who identified himself as "the owner", and asked about the apartment.

3. Mr. Malm advised me that the apartment had been rented the day before. Upon information & belief, this is not so.

4. I am a Negro, and believe because of this fact I have been discriminated against in violation of the law.

Hines File

**DETERMINATION AND ORDER AFTER INVESTIGATION**

**Case No. CH-15362-67: Edward Hines vs Franklyn Malm, Sr., and Anna H. Malm**

: : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :

12/20/67

Complainant, a Negro, filed a verified complaint with the New York State Commission for Human Rights against the above-named respondents, charging the respondents with an unlawful discriminatory practice relating to a housing accommodation, in violation of the New York Law Against Discrimination.

Briefly, complainant alleges that on December 18, 1967, he visited the respondents' premises and inquired into renting a six-room apartment. He was informed the apartment had been rented the day before. Complainant further alleges that the apartment is still available and he believes he is being denied the apartment because of his race and color.

The facts gathered during the course of the investigation herein conducted support a finding of probable cause to credit the allegations of the specific complaint. Accordingly, I do so find.

Pursuant to Section 297.2(b) of the Law Against Discrimination, this matter is ordered for public hearing.

Dated: December 29, 1967

Bessie A. Buchanan
Investigating Commissioner

To:

Mr. Edward Hines, Complainant
50 Herriot Street
Yonkers, New York

Mr. Franklyn Malm, Sr., Respondent
32 Purser Place
Yonkers, New York

Mrs. Anna H. Malm, Respondent
32 Purser Place
Yonkers, New York

Higgs File

## DETERMINATION AND ORDER AFTER INVESTIGATION

Case No. CH-15400-68: Shearin Otis Higgs vs. Franklyn Malm, Sr. and Anna H. Malm

On January 15, 1968, complainant, a Negro, filed a verified complaint with the New York State Commission for Human Rights against the above-named respondents, charging respondents with an unlawful discriminatory practice relating to a housing accommodation, in violation of the New York Law Against Discrimination.

1/15/68

Briefly, complainant alleges that on December 16, 1967, he visited respondents' premises and inquired into the availability of a six-room apartment. Complainant was shown the apartment, but was told there was a waiting list. Complainant offered to leave a deposit which was refused. He was also told the rent would be higher than quoted to others. Complainant believes he was denied an available apartment and was denied the terms, conditions and privileges of a housing accommodation, because of his race and color.

The facts gathered during the course of the investigation herein conducted support a finding of probable cause to credit the allegations of the specific complaint. Accordingly, I do so find.

Pursuant to Section 297.2 (b) of the Law Against Discrimination, this matter is ordered for public hearing.

Dated: January 23, 1968

Bessie A. Buchanan
Investigating Commissioner

To:

Mr. Shearin Otis Higgs, Complainant
26 Randolph Street
Yonkers, New York

Mr. Franklyn Malm, Sr., Respondent
32 Purser Place
Yonkers, New York

Mrs. Anna H. Malm, Respondent
32 Purser Place
Yonkers, New York

Filed 1/15/68

Shearin Otis Higgs

Mr. ~~& Mrs.~~ Frankyn Malm s

Shearin Otis Higgs

(26)
26 Randolph St., Yonkers, N.Y. 423-3337

Mr. ~~and Mrs.~~ Franklyn Malm

32 Purser Place, Yonkers, N.Y. YO 9-2125

x

Saturday, December 16, 1967 and continuing thereafter

offering inferior treatment; withholding available housing accommodations; refusing to rent

X X

On Saturday, Dec. 16, 1967, at approximately 4:00 p.m., I went to 32 Purser Place, Yonkers and inquired of Mr. Malm regarding the 6-room apartment advertised for rent.

2. Mr. Malm showed the apartment, but mentioned that he had a waiting list.

3. Mr. Malm questioned me as to my occupation and the reason why my wife and myself wanted such a large apartment.

4. Mr. Malm denied me the opportunity to leave a deposit on the apartment.

5. Mr. Malm mentioned that "a colored lady" had been there to see the apartment.

6. Mr. Malm advised that the rental might be more than $92 as there would be some cost in fixing up the place.

7. I am a Negro, and believe that I have denied the opportunity to rent this apartment and have been given different information and treatment thaxt Caucasians because of my race in violation of the law.

## CHRONOLOGICAL LISTING - CROSBY, HINES & HIGGS vs. MALM

| | |
|---|---|
| Dec. 7, 1968 (Thurs) | advt for 6 rooms, 3 fam house, in Herald Statesman |
| Dec. 7, 1968 - | Mrs. Crosby writes letter answring ad |
| Dec.16, Sat - Morning | Mr. Crosby visits 32 Purser Pl. Mr. Malm says apt. avail, but giving opportunity to people answering ad by mail. Refused to show apt. |
| Dec. 16-Sat - afternoon | Mr. Higgs visits 32 Purser Place. Mr. Malm shows apt but says has waiting list. Mr. Malm refuses to take deposit. Advises rent "might be more than $92 as some cost in fixing place up". |
| Dec. 16-Sat noon | Peter Hemingson, verifier, visits premises. Mr. and Mrs. Malm show apartment, rent $92 month, on 3rd floor. Apartment available to Mr. Hemingson. Mr. Hemingson advised by Malms that two prior Negro families had been there, but were refused apartment because of race. Malms mentioned Crosby letter had been destroyed as he was Negro, and other Negro turned down (Gibson). |
| Dec. 18-Mon 6:00 p.m. approx. | Mr. Hines visits 32 Purser Place. Mr. Malm said apartment already rented. |
| Dec. 18-Mond 10:30 p.m. | Mr. Hemingson telephones Malms. Mrs. Malm said apt still available. Invited Mr. Hemingson to send his wife next day with deposit to rent apartment. |
| Dec. 20 | Mr. Hines files complaint SCHR |
| Dec. 22 | Mr. Crosby files complaint SCHR-info given in advance to SCHR on Monday, Dec. 18. |
| Jan. 15 | Mr. Higgs files complaint SCHR |
| Jan. 4th | SCHR gets temporary stay on apt.--judge grants Show Cause Order when respondents fail to appear. |
| | NOTE: AFFIDAVIT OF HEMINGSON in Order to Show Cause mentions not only that Crosby was denied apartment because of race, but that "another Negro had been turned down"---This is Gibson. |
| Dec. 19-Tues 9:00 pm. | MRS. Higgs visits premises..Mr. and Mrs. Malm tell her that apartment has been rented "2 days before". Refuses to show apartment; refuses to tell what rental is, but expects it to go up becuase of repairs...tells Mrs. Higgs they don't have key, then says they do have key, but can't go into apt. Preceding evening, Mr. Hemingson had been told that apt was available for him to place deposit on apt. Note contradiction in date when apt supposedly rented. |

# RECENT DEVELOPments

- ATTY FOR RESPONDENTS HAS ADVISED COMMISSION that GIBSON has RECEIVED THREATENING TELEPHONE CALLS
- HIGGS CAN'T ATTEND HEARING UNTIL 4:30
- DAMAGES CAN BE RECOVERED EVEN IF NOT ALLEGED IN complaint. – Hines has basis for compensatorey damages

CARL:

MR. AMOS CARNEGIE
488-5364
IS THE ATTORNEY FOR the COMMISSION.

NO DEFINITE APPOINTMENT WAS MADE FOR WED. AS CARNEGIE HAS A HEARING

PLEASE READ THE RESPONDENTS AFFIDAVIT. AS MARKED. IN FILE.

MRS. GLORIA LUNDBERG
212-KI-6-1619.
914-YO 9-8595
YONKERS HOUSING REPRESENTATIVE

SEDFRE

HILL, GEORGE VS NEW YORK STATE HARNESS RACING COMMISSION, 1964-1966
(DISCRIMINATION IN HARNESS RACING)

ical Society of Wisconsin

Please Retain Original Order

Box 37
Folder 10

THE OHIO CIVIL RIGHTS COMMISSION

James A. Rhodes
*Governor*

Arthur L. Peterson
*Chairman*

Charles Bishop
Roosevelt Dickey
William Green
Clingan Jackson

Ellis L. Ross
*Executive Director*

CENTRAL OFFICE
240 Parsons Avenue
Room 234
Columbus, Ohio 43215

July 16, 1964

Mr. George Hill, Jr.
Toledo Raceway Park
5700 Telegraph Road
Toledo, Ohio

Dear Sir:

In accord with your wishes, expressed by telephone today, I have enclosed a form which may be used to withdraw your charge against the United States Trotting Association. Please sign the form and return it in the self-addressed, stamped envelope.

We are pleased that you have been reinstated, in terms of eligibility, as an owner, trainer and driver. This, I assume, to also cover the eligibility of your horses to participate in sulky races.

Though we may not pre-judge parties in terms of guilt or innocence, we believe the text of your complaint ([illegible]-7-64-[illegible]) possessed the basic ingredients of a sound case in terms of racial discrimination. Had investigation substantiated the charges, we would have, in all probability, effected a resolution similar to that which you now enjoy.

The basis of your suspension by the respondent was both an economic factor, as well as a challenge, to your integrity as a man. Reinstatement removes the onus of irresponsibility

(more)

as levied. Time will further provide you the opportunity to convince the Trotting Association and your [illegible] [illegible] of the integrity referred to above.

I wish you and yours the best of fortune.

Respectfully yours,

[illegible]

ELR:jwh
Enclosures: 2

STATE OF NEW YORK - DEPARTMENT OF STATE
HARNESS RACING COMMISSION
301 Second Avenue
New York 17, N. Y.

NOTICE OF REVOCATION OR SUSPENSION OF LICENSE

DATE: **December 21, 1964**

OCCUPATION: **Owner - Trainer**

Mr. George Hill Jr.
2987 Glendale Avenue
Detroit, Michigan

Dear Mr. Hill:

You are hereby notified that your license to participate in or be employed at harness racing meets in New York State is:

☐ ( ) Revoked for the reason(s) checked below.

☒ ( ) Suspended effective **Immediately** for the reason(s) checked below.

☒ You have been convicted of a crime involving moral turpitude.

☐ You have engaged in bookmaking or other form of illegal gambling.

☐ You have been found guilty of fraud or misrepresentation in connection with racing or breeding.

☐ You have been found guilty of a violation or attempt to violate a law, rule, or regulation of racing in a jurisdiction which suspension from racing might be imposed in such jurisdiction.

☐ You have violated a rule, regulation, or order of this Commission.

☐ You are a public officer, public employee, or party officer.

☒ Your experience, character and general fitness are such that your participation in Harness Horse Race meets will be inconsistent with the public interest, convenience or necessity or with the best interests of racing generally, in conformity with the purposes of the pari-mutuel revenue law as amended.

☒ You made a false material statement in your application regarding prior arrest(s).

☐ Other (Specify) ______

PLEASE RETURN YOUR LICENSE OR PERMIT TO THIS OFFICE IMMEDIATELY.

FOR THE COMMISSION

STATE OF NEW YORK DEPARTMENT OF STATE
HARNESS RACING COMMISSION
801 SECOND AVENUE
NEW YORK 17, N. Y.
OREGON 9-[illegible]

ROBERT A. GLASSER
CHAIRMAN

[illegible] D. EDDY
COMMISSIONER
JAMES A. FARLEY
COMMISSIONER

## NOTICE OF REINSTATEMENT

DATE: February 10, 1965

OCCUPATION: Owner-Trainer

Mr. George Hill Jr.
451 West 166th Street Apt. 4
New York, New York 10032

Dear Mr. Hill:

The suspension of your 1964 owner-trainer's license has been terminated and a temporary 1965 license has been issued on February 10, 1965.

Anthony J. Perone
CHIEF HARNESS RACING INVESTIGATOR

cc: Ike Williams, Esq.
U.S.T.A.

Roosevelt Raceway
WESTBURY, NEW YORK · PIONEER 6-6000

July 1, 1965

Mr. George Hill, Jr.
451 West 166th Street
Apt. 4
New York 32, New York

Dear Mr. Hill,

Please take notice that the notification of the New York State Harness Racing Commission that your license has been denied requires us to take immediate action to remove you from our grounds.

Under the Commission's regulations no person may have continued access to the stable area if his license be denied. Accordingly, you are requested to make arrangements to remove your horses within the next few days.

If I do not hear from you on or before 4 P.M. Tuesday, July 6th, we will be obliged to take such other and further steps as we may deem necessary.

J. J. O'Neill
Chief Of Security

cc: S. H. Fosner
J. Cashman

(Revised as of December 30, 1965)

TO: Chairman Glasser July 29, 1965

FROM: Counsel Sarafan

SUBJECT: Investigation of George Hill, Jr.

I have set forth herein a summary of the history and the evidence gathered in this matter.

Hill first applied for a New York harness racing license by application dated November 23, 1964, submitted at Yonkers Raceway, in which he sought an owner-driver-trainer's license. In the application he listed one arrest in 1952 for possession of an unregistered pistol indicating that there had been no conviction ("case never went to court"). He also stated that he had served in the Air Force from July 31, 1947 to March 31, 1948 and had received an honorable discharge, that he had been a minister from 1953 to 1961 in Detroit, Michigan and a trainer from 1961 to 1964 in the George Hill, Jr. Stable, Detroit, Michigan. He also stated that the United States Trotting Association had licensed him to drive at fairs in 1964 (license F275206) and that in July 1964 his license had been "suspended for 2 days due to financial obligations which were paid off."

On the basis of his application an owner-trainer's license was issued on November 30, 1964. (We do not issue a driver's license to anyone who has only a U.S.T.A. "F" license until he qualifies before our officials).

A subsequent check of Hill's fingerprint record revealed additional arrests and a form letter was sent to him at the permanent home address given in the application (2987 Glendale Ave., Detroit, Mich.) asking for information on certain of them. The letter was returned marked "Moved-Left No Address." Finally, a Notice of Suspension was sent out on December 21, 1964 and it was returned in like manner.

We first met Mr. Hill on February 4, 1965 when he appeared at our offices. He was seeking a 1965 license and had learned that his name was on the "Stop List".

He told me that he had not received the above letters in December 1964 because he had moved his family (I believe he said to Chicago). He was planning to transfer his harness racing activities to New York and had, in fact, moved his horses to Roosevelt Raceway in December 196

He characterized himself as a "militant negro;" he said that he was being sponsored in New York by Congressman Adam Clayton Powell and that Jackie Robinson, the former baseball star, had suggested he enter harness racing in New York.

His personal history, as he gave it, was as follows:

He was brought up in Memphis, Tennessee where his father owned a substantial grocery business and was financially well-to-do. The family had moved to Chicago around 1950 where his father had prospered and now owned a chain of groceries and markets. As an adolescent Hill always drove an expensive car, a fact which annoyed the local Southern police. After graduation from high school in Memphis, he entered Tennessee State University in 1949, transferred to Lemoyne College in 1950, then transferred to the United Theological Seminary, Detroit (date not stated) from which he graduated in 1953 with the degree of B.D. and in 1954 with the degree of Th. M. He was ordained a minister and had a pulpit for five years, the Little Rock Missionary Baptist Church in Detroit, until 1959. Thereafter, he devoted only part time to religious duties, mainly visiting prisons to minister to the inmates and in 1961 he decided that the ministry was not his calling in life. He had become interested in harness racing and decided to make that his life work. Also in 1961, he had run for mayor of Detroit, the first negro in the city's history to do so and his background had been checked by the Board of Canvassers as a matter of course and found good despite his earlier record of arrests. (His record showed seven arrests from 1946 to 1954.)

Those arrests, he continued, were instances of police harassement and family quarrels with his in-laws (the three arrests in July 1952 were all part of the same incident) which never went to court and which he never considered to have been formal arrests. The one instance not of this type, in which he was sent to Ionia State Hospital in 1954, was the result of a "framed-up" charge made against him because of his civil rights activity. However, he was released and received a public apology from the authorities. All this was gone into by the Board of Canvassers in 1961 and found to be so, Hill claimed.

Another reason for not listing more than one arrest, he stated, was that he had gone into this entire matter of the arrests in detail with the U.S.T.A. and assumed we were aware of it.

Hill displayed a number of cards showing that he had been licensed in Michigan as a trainer in 1963 and 1964, in Ohio as an owner-trainer-driver in 1964, (he stated he had also been licensed as a trainer in Illinois in 1963 and 1964 but did not have the cards with him), and in Michigan in some amateur boxing capacity in 1959 ("Rev. George Hill"). He also displayed cards showing membership as a Master Mason, in 1961, in the A & A Scottish Rite of Free Masonry, Wolverine Lodge, Detroit ("Rev. George Hill, Jr.") membership in the U.S.T.A. in 1964, and commission as a notary public, Wayne County, Michigan (expiring July 2, 1965). One card, the size of a post card, a memento of the 1961 mayoralty race, contained a short biographical sketch and listed the degrees from the United Theological Seminary as set forth above.

When he decided to go into harness racing seriously his father financed the purchase of horses with a substantial outlay of cash and he had purchased good stock. In fact, he had "refused" $50,000 for one of the horses he now owned, a three-year-old.

On this visit to the commission office on February 4, 1965, Hill was dressed in what appeared to be an Air Force uniform and wore Lt. Colonel's insignia. He explained that he had been commissioned a Lt. Colonel in the St. Martin's Nautical Air Wing of the President's War on Poverty Program and produced what purported to be a copy of orders from Headquarters St. Martin's Air Cadets, New York City, dated 12 January 1965, signed by a Donald Yearwood, Commander Air Cadets, ordering Lt. Col. George Hill to assume duties as Plans and Training Officer January 15, 1965.*

Hill was accompanied by his pregnant wife on his visit here.

On the basis of the above outlined statements we issued Hill a temporary owner-trainer's license on February 9, 1965, good to April 9, 1965 explaining that we planned to check on his representations and that a regular license would be issued if the findings proved favorable. We also explained that he would receive a driver's license as soon as he demonstrated his competence to our officials. (He has never done this and his record of driving, subsequently received, indicates a lack of competence and experience.)

---

*We have not checked out the authenticity of this commission; following his arrest on Feb. 20, 1965 (p. 16, infra) Hill advised us he was no longer on "active duty."

On April 9, 1965, the temporary license was continued to May 10, 1965. Some unfavorable information had been received prior to April 9th so as to preclude issuing a regular license. On May 19, 1965, another extension, to June 30, 1965, was made as information continued to come in.

In June, Investigator Rooks visited Chicago, Detroit and Livonia, a city near Detroit, interviewed local officials, credit agencies, Hill's father and the latter's wife, Hill's second wife (his present wife is his third), and some others who had known him. We have received communications from police and other officials in those cities and from local businessmen and individuals who had been victimized by Hill by means of a large number of bad checks and unpaid bills. In addition, we have received complaints from business firms and individuals in New York City and vicinity, who were victimized in like manner since Hill's arrival here. The details of these matters are set forth in this report.

On June 30, 1965, upon the accumulated information, each fact documented or obtained by interview, all of which establish the falsity of almost every material representation made by Hill on February 4, 1965 and thereafter, as well as his poor general character, we formally denied him a license upon the following grounds:

1. false material statements in his application regarding prior arrests;
2. lack of financial responsibility;
3. lack of requisite good character.

On July 2, 1965, Hill signed a complaint, under oath, before the New York State Commission For Human Rights, charging the New York State Harness Racing Commission and Chief Investigator Perone with discrimination for refusing to license him because of his race and color.* Hill simultaneously made the same complaint to CORE and the NAACP.

On July 9, 1965 Hill's attorney filed a notice of appeal from the commission's denial of June 30, 1965.

* * * * * *

---

* The charge was dismissed by the Commission for Human Rights on Sept. 30, 1965.

POLICE RECORD, MILITARY SERVICE AND EDUCATION

Hill is 34 years old. He was born in Memphis, Tennessee on May 28, 1931. His police record obtained from the NYS Department of Correction, the Federal Bureau of Investigation, [redacted] the Detroit Police Department, the Saginaw, Michigan Police Dept. and the Michigan State Police Dept., lists the following arrests prior to 1965:

(1) 4/30/46, Marysville, California, as James Williams, charge stated in section number of code (Sec. 700 W&I code), no disposition stated.

(2) 5/21/46, Hot Springs, Ark., Juv. Del., rel. to mother.

(3) 9/8/51, Memphis, Tenn., inv. (susp. larceny), $25 & $1. c on 9/12/51.

(4) 7/4/52, Saginaw, Mich., G.L., released.

(5) 7/21/52 Saginaw, Mich., Poss. of Unregistered Pistol, $50. & $4.30 c or 60 days, fine paid.

(6) 7/25/52, Saginaw, Mich., Breach of Peace, 90 days.

(7) 9/11/54, committed to State Hospital, Ionia, Mich. as criminally insane after arrest for G.L.in Detroit; returned to court as improved on 3/23/57; case dismissed 4/11/57 "without prejudice" because complainant could not be located.

On July 30, 1947, Hill enlisted in the U.S. Army Air Corps and was separated with an Undesirable Discharge on March 31, 1948 because of unfitness and undesirable habits.

On November 26, 1951, Hill again enlisted in the same service (now U. S. Air Force) and was separated on March 5, 1952 with an Undesirable Discharge for concealing his prior enlistment.

In October 1958 the character of the first discharge was changed to a General Discharge since Hill was 16 years of age at the time of enlistment.

As indicated above, Hill was brought up in Memphis. At some point around 1950 or 1951 his family moved to Chicago. In 1951 his father sold to the present owners a small grocery store he was operating in Chicago. The records of the Chicago Police Department disclose four arrests of Hill from February 1951 to January 1953, one for larceny, three for disorderly conduct, all resulting in discharges. The arrests in Saginaw in 1952 and the arrest in Detroit in 1954 indicate that Hill did not remain long in Chicago.

Hill's educational career intertwined with the two military services. According to the records he graduated from Booker T. Washington High School in 1949. (This was after the first discharge.) He attended

Tennessee Agricultural and Industrial State University from September 1950 to December 1950, making a "very, very poor average". Next, he attended Lemoyne College, Memphis, Tenn., from September 1951 to October 19, 1951, when he "withdrew". (This was followed by his second enlistment.) Thereafter, he attended State University of New York at Buffalo from September 1953 to November 30, 1953, when he resigned "for financial reasons", receiving no credit. Later he attended the University of Detroit from Sept. 1961 to Jan. 1962 as a special student.

Certain details of the case that resulted in Hill's confinement in the state hospital for two and a half years ('54-'57) are of interest. According to the charge, he obtained $300. from one Jimmy Williams on the false representation that he was in a position to get a charge against Williams of Carrying Concealed Weapons dismissed by paying said money to certain individuals. Prior to trial the court ordered Hill to be examined by a board of three psychiatrists. Upon the board's report that Hill was "psychotic", he was committed. In February 1957, the Medical Superintendent of the State Hospital reported that Hill at the time of his admission was suffering from severe mental symptoms but had received maximum benefit from institutionalization and had shown considerable improvement in his attitude towards ~~his sexual~~ racial* problems.

What Hill's sexual problems were, are not stated in the records perused by our investigator but may be gleaned from other facts. According to Hill's own statement in a subsequent application for a real estate salesman's license, he was arrested in 1958 in a paternity suit for a child born out of wedlock in 1954. (This arrest does not appear in his police record.) He has listed three marriages in a certain credit report, the first to a Mary Elizabeth, the second to a Helen, the third (and present) to a Sheila. We have no dates of the first marriage. His second wife Helen married him in January 1958 and separated from him in August 1958 because although she was pregnant with his child, he had gotten his eventual third wife Sheila pregnant at the same time. (He has never paid the $10.00 a week ordered by the court for the support of their daughter.) In 1960 he married Sheila after being divorced by Helen. In a credit report, dated 1963, he admitted to five dependent children. It is believed he has one or two more by now.

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* The Michigan record perused by our investigator stated "sexual problems". This has turned out to be

## THE UNITED THEOLOGICAL SEMINARY

On July 25, 1957, the United Theological Seminary, Inc., was incorporated as a Michigan ecclesiastical corporation "to teach theology", "on private and public subscriptions" with "Rev. George Hill, Jr." of Detroit its president, a director and the first resident agent. Its only assets were listed as "one large desk, one swivel chair, six comfort chairs, twelve student desk chairs, one large pulpit, one small pulpit, two end tables and one center table (total value $500.)"

The corporation filed a regular annual report in April 1958 and on May 15, 1959 its charter became void presumably for failure to file an annual report for that year. Actually, it operated in the Tobin Building at 1308 Broadway, Detroit, occupying two rooms, for about six months in 1957-1958, finally being evicted for non-payment of three months back rent. Both the building manager Ben Cawthorn, and Hill's second wife Helen, understood that Hill solicited contributions from local citizens. The students, about a dozen, also paid tuition, according to Cawthorn, and Helen Hill understood that the school had been approved by the Veterans Administration for G.I. educational benefits. Both Cawthorn and Helen Hill characterized Hill as a "con man".

The 1958 report of the Seminary did not list any church to which it was affiliated, although the form (apparently supplied by the Corporation and Securities Commission) has a question "Location of Church" which was left blank. Helen Hill informed our investigator that she had never heard of the United Baptist Church* nor of the Little Rock Baptist Church,** never knew her former husband to have preached at or to have been connected with any church. In fact, during their short marriage, she never knew him ever to attend church on Sunday. C. McGlown, owner of the Nu-Era Realty Co., 2455 W. Davidson Avenue, Detroit, who had employed Hill as a real estate salesman for about nine months in 1962, told our investigator that no church by either name ever was located in the area of Mack and Baldwin Streets, the address given by Hill when interviewed at the U.S.T.A. on December 30, 1963, as the location of his church.

In May 1965, the Chief of Detectives of the Detroit Police Department, inquiring at our request, was informed by the Detroit Council of Churches that they had no knowledge of the operation of the school nor of George Hill Jr's being an ordained minister. Thereafter, acting on our direct request the Council endeavored to secure information from several leaders among the Negro clergy in Detroit. According to the Council's report, none had ever met Hill personally, some had "heard of him". Some of the leaders had also heard of the United Theological Seminary but could give no specific information on its location or its actual existence. Finally, the Council reported, there was no listing of the Seminary in any bona fide denominational periodical nor has it ever been accredited by the Association of Theological Seminaries.

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*Hill told the U.S.T.A. on Dec. 30, 1963 he had been pastor of this church for 4 years

CREDIT BACKGROUND

Our investigator checked the file on Hill at the Credit Data Corporation, the leading credit reporting agency in Detroit servicing retailers and lending institutions. Their file on Hill covering almost five years from about the middle of 1959 to about the middle of 1964 reveals fifteen entries for non-payments, judgments, repossessions, and "skips" for such items as rent, cars, household items, fuel oil, and bank loans, totalling $7,500 - $8,000. In addition, there are about fifty entries of inquiries by other retailers and lending institutions with whom Hill presumably was attempting to do business. He is listed as a poor financial risk. Helen Hill, his second wife, informed our investigator that Hill has ruined her credit standing in Detroit, even to this day, and in the short period of their marriage fleeced her out of $1500. in savings. C. McGlown told our investigator that after Hill left his employ in 1962 (at Mr. McGlown's request) there was many inquiries by individuals and stores claiming debts owed by Hill. One in particular, the Peoples Outfitting Co. claimed it had sold Hill furniture on credit, had never received any payment and had learned that Hill had resold the furniture to a third party. Mr. McGlown's opinion of Hill was very unfavorable.

In September 1961, Hill was one of eleven persons to challenge an incumbent mayor of Detroit in a non-partisan primary election. Hill boasts that he was the first Negro to run for mayor of that city and claims that his background and character were investigated as a matter of course by the Detroit Board of Canvassers and Elections. Hill's nominating petition, executed under oath, lists his personal qualifications as "Minister, Educator, Post Degree Student University of Detroit, Former Student Tennessee State University", self employed and a resident of Detroit for 12 years (the required statutory minimum). Significantly, year. However, a biographical sketch in the "Detroit News" of September 8, 1961, describes Hill as a minister, and as having attended Lemoyne College, Tennessee State University, Wilson Junior College, University of Buffalo, and as having graduated from the United Theological Seminary, 1953 (emphasis supplied) with a master's degree, and as being a post degree student at the University of Detroit. The petition contains no question requiring information on prior arrests or convictions. Inquiry by our investigator at the Board of Canvassers and Elections established that payment of a $100. fee was the only requirement for a place on the ballot, that a pre-election investigation of a prospective candidate would only be made where extreme circumstances demanded, and that no investigation had been made on Hill.

REAL ESTATE BUSINESS (1961 - 62)

This period finds Hill in the real estate business. (Hill never mentioned this phase of his life to us either in his interviews or applications.) On December 27, 1960, he applied for and obtained a salesman's license, in an application executed under oath. The only prior arrest listed by Hill was in 1958 in connection with the paternity suit. Hill worked for five weeks in the latter part of 1961 for an Emmett Clarke of Clarke Realty, Detroit. Subsequently, he worked for a Mrs. Aora Glover, a broker and later for E. McGlown, Nu-Era Realty Co., both in 1962. In a proceeding before the Michigan Corporations and Securities Commission, initiated by a complaining customer of Hill's, the hearing officer in a report dated August 17, 1962, recommended that Hill's salesman's license be revoked. The hearing officer found that while employed by Mr. Clarke, Hill had placed unauthorized advertisements in the newspaper; that while employed by Mrs. Glover, he misrepresented the facts of a transaction to a customer (Hill had told the landlord that a prospective tenant had three children and the husband worked for U.S. Rubber Co. whereas the tenant turned out to be a woman with seven children on relief); that Hill had received a broker's commission in the transaction without the knowledge or consent of his employing broker, Mrs. Glover, who learned of the transaction only after the complaint; and that Hill had falsely answered the question on arrests in his application in that his police record listed six other arrests starting in 1946. Prior to the entry of a proposed order adopting the findings and recommendation of the hearing officer Hill petitioned and was granted a re-hearing on the grounds that he had not been represented by counsel at the hearing. However, he never pursued the re-hearing and the circumstances indicate (he departed permanently from Detroit in 1964) he does not intend to do so.

An earlier and similar matter is relevant here. In 1963, the Michigan Racing Commission, in connection with Hill's application for a harness license (this subject will be dealt with later) obtained a credit report highly derogatory because of unpaid bills and judgments which contained the following statement:

> "He (Hill) also appeared as President of Cavalcade Building & Construction Co; Inc., 139 Cadillac Square, Detroit, Mich., a Defacto Michigan Corp. On 7/30/59 the Michigan Corporation & Securities Commission had a formal hearing regarding application for a State residential builder's license for that concern, which application was withdrawn at 4:20 P.M. 7/29/59 by Rev. George Hill, Jr. Charges made by the Commission on Case A202 were that the company failed to meet necessary requirements and false statements made by Rev. George Hill, Jr., president and James D. Young, treasurer of the concern. Recommendations were that any future license application of the said company or any of its officers be denied."

There is nothing in the 1962 proceeding on Hill's salesman's license to indicate that the hearing officer was aware of the 1959 proceeding. We have not obtained any records of the 1959 proceeding and no additional details than quoted above.

HARNESS RACING

The 1963 application to the Michigan Racing Commission was Hill's first in harness racing, so far as we know. As stated above that commission received a derogatory report dated May 31, 1963 in respect to Hill's past financial responsibility. The report also listed the 1951 arrest in Memphis, the 1952 arrest in Saginaw for possession of the unregistered pistol, the 1958 arrest in Detroit in the paternity suit and a 1954 arrest (apparently in Michigan) on several traffic warrants (fines paid).(Our recent investigation reveals 4 arrests on traffic warrants in Detroit: 1-54, $8 fine; 6-54 $16. fine; 8-60 $60 or 10 days and 1 yr. probation with no driving; 10-62 $32 fine.)

According to the report Hill representing he was paying $10.00 a week for the support of his child by Helen Hill. The three marriages are mentioned. The report also listed several real estate companies for whom Hill had worked as a salesman and stated that he now was applying for a real estate broker's license. (We have no verification of this fact.)

Among his assets, Hill listed $1500. in cash on hand, a gift from his mother to help in getting started as a broker. (His only other listed assets were household furnishing valued at $9,000.) Among the details listed presumably on the favorable side were Hill's representation that he had been an ordained minister since January 31, 1953, having been ordained in Detroit, that he attended several colleges including Tennessee State University, Lemoyne College, University of Buffalo, and United Theological Seminary, the last of which for five years. (Emphasis supplied.) .

It is our information that in connection with a hearing conducted by the Michigan commission on whether to grant or deny the license, Hill charged that race prejudice had been a factor. The commission granted the license, and renewed it in 1964.

In October 1963 Hill submitted an application for a trainer's license in Illinois, at a Chicago track. He failed to list his several arrests, a fact not discovered by the Illinois Racing Commission until the end of the year. The Illinois commission in a report to the U.S.T.A stated it was undecided whether to revoke his license in 1963 or act on the matter when Hill reapplied in 1964. In 1964 it renewed his license.

## THE UNITED STATES TROTTING ASSOCIATION.

On December 9, 1963, Hill applied for 1964 membership (as an owner) in the U.S.T.A. and a 1964 driver's license for fairs. He listed an arrest in 1952 in Saginaw, Michigan, for possession of an unregistered weapon, resulting in a $50. fine, all caused by a family feud with his in-laws. On December 30, 1963 he appeared at the U.S.T.A. office in Columbus, Ohio, with his pregnant wife, and although he was informed that his applications were being processed, charged that they were being delayed because of his color. He also threatened court action.

The other arrests were called to his attention and he made his explanations in a letter dated January 15, 1964: arrests in 1946 in Marysville, California and in Hot Springs, Arkansas occurred when he was a minor and away from home. He was released without any charge and sent home in both instances. The 1951 arrest in Memphis occurred when he was parked in a "hot rod" in the lot of a service station and the attendant called the police. Hill posted $25. bond to avoid staying in jail overnight and never returned for a refund although there were no on his wife's claim he had drawn a pistol on her although none was found on him by the police who later released him. Next a groundless charge of larceny was made by his in-laws but was dismissed. The third arrest for breach of the peace followed a fight several days later with his brother-in-law but again the police released him. Hill claimed he had not appeared in court in any of the three cases. As for the $50. fine the records state he paid in the weapon's case, he speculated that the officer in charge (now dead) had payed the money because of a personal interest in Hill which developed when the officer learned Hill was studying for the ministry.

The 90 day sentence the records state he served in the breach of the peace case he denied serving, suggesting that the records must be in error. The 1954 arrest for larceny which resulted in Hill's confinement in Ionia State Hospital, (in 1954 he "was being heralded as one of Detroit's rising and promising young ministers"), was a false charge made against him because of his public attacks on "a mass outbreak of police brutality aimed at the Negro community". His claims of "being framed" caused the Judge to send him to the hospital for examination but the doctors there did not feel he needed treatment and so he was returned to court where he "was tried and acquitted".*

On March 26, 1964, the U.S.T.A. granted Hill membership and an "F" (Fair) license. On July 6, 1964, the U.S.T.A. suspended Hill's membership and license for violation of its Financial Responsibility Rule ("20"). A number of complaints of unpaid debts had been received:

(1) The Laramie Currency Exchange, Cicero, had cashed two of Hill's checks on June 27, 1964, one for $140. and one $440., both returned "account closed", and had loaned him an additional $20. Total $600.

(2) The Proviso Prescription Pharmacy, Maywood, Ill. had supplied medicines, etc. at Washington Park, $559.38.

(3) Raymond J. Morandi, D.V.M. Chicago, Ill., for veterinary services at Washington Park, $147.

(4) John Hendricks, Arlington Heights, Ill., for feed at Washington Park, $214.65.

(5) Hertz Rent-a-Car, Chicago, for car rented in Chicago, recovered in Toledo after due date, speedometer disconnected after 3172 miles registered; $797.20.

(6) Carl R. Karr, Lancaster, Ohio, blacksmith $80. balance due ($50. paid).

(7) Sam T. Crawford, Rochester, Minn., loaned van to Hill to truck horses from Raceway Park, Toledo, Ohio to Vassar, Michigan. Truck returned with motor burned out. Repairs, $350.

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Hill was informed of the suspension by a Judge at Raceway Park, Toledo, on July 11, 1964. By letter dated July 14, 1964, and received by the U.S.T.A. July 15, 1964, Hill acknowledged "unofficial notice" of the suspension order, filed for an appeal, and requested the suspension be lifted pending the appeal which would enable him to comply with Rule 20.

On the same day, July 14, 1964, Hill filed a formal written complaint with the Ohio Civil Rights Commission alleging that he had talked with Don Millar, Executive Vice-President, on July 13, 1964, and that Millar could state no justification for the action taken, and charging the U.S.T.A. and Don Millar specifically, with harassment and discrimination based on Hill's race. (In the sworn complaint executed by Hill he represented that he had attended the United Theological Seminary, Detroit, Michigan for 4 years and had graduated in 1953.)

The complaint had its effect. Mr. Millar by letter dated July 16, 1964 temporarily lifted Hill's suspension to September 1, 1964 "to enable him to discharge obligations which resulted in his suspension."

On August 31, 1964, Hill appeared at the U.S.T.A. office and presented proof of payment of the Proviso bill (#2), the Hendricks bill (#4), and the Hertz bill (#5); he stated the Laramie checks (#1) were unrelated to harness racing and Millar had agreed not to consider them, arrangements had been made to take care of Dr. Morandi's bill (#3), Karr's (#6) would be paid as soon as he located him, and Crawford's claim (#7) had been settled.

Hill's suspension was terminated. On October 2, 1964 the Ohio Civil Rights Commission dismissed the charges for "no probable cause" following an investigation of the U.S.T.A's actions.

In June 1965, the N.Y.S.H.R.C., in connection with the instant matter, ascertained that all of the debts which had not been paid as of August 31, 1964 were still unpaid, namely, Laramie (#1), Dr. Morandi (#3), Karr (#6), and Crawford (#7), and received notice of another for two bad checks cashed for Hill in Toledo in August 1964 totalling $600. Thus there remain $1677 in unpaid debts from this period. The Laramie Exchange (#1) informed us that efforts to collect their claim were met by accusations of race prejudice from Hill.

On September 9, 1964 Hill applied to the U.S.T.A. for a qualifying license ("Q") which would have enabled him to break into pari-mutuel racing. The request was denied on September 25, 1964 because of his lack of experience and proficiency in driving.

Hill's only recorded driving experience was in 1964 in twelve races at fairs in Michigan driving the same horse in each, "R. Michigander". In twelve starts he never came in first, second or third. His best finish was a fourth and his total purse earnings for the year as a driver was $74.

A review of the racing records for 1964 discloses that Hill owned eight horses at one time or another, three of which he still owned at the end of 1964 and shipped to Roosevelt Raceway in December. The total purse earnings of the eight horses during Hill's ownership in 1964 was about $1500. This includes the winnings of "R. Michigander, driven by Hill himself. The other horses were driven byother drivers presumably hired by Hill.

Mr. Irving Altman, Executive Vice-President of the Freedom National Bank, New York, and Jerry Brown an employee of the bank were interviewed by Investigators Caputo and Goldberg in May 1965 in connection with certain bad checks Hill had drawn on this bank. Mr. Altman related to our investigators that Hill had told him that he, Hill, had been invited to race in New York by the New York State Harness Racing Commission because he was such a "terrific driver." Mr. Brown added that Hill claimed to have earned over $90,000 in harness racing in 1964. A Mr. Nagler, an investigating attorney for CORE, told me on July 22, 1965 that Hill told certain CORE representatives, including Mr. Nagler, that he, Hill, had earned $100,000 in harness racing in 1964. However, Hill could not explain to them what he had done with the money or why he now found himself in financial straits after having earned so much money so recently.

On April 20, 1965 the U.S.T.A. denied Hill's application for 1965 membership because of the matters pending before the NYSHRC.

THE BAD CHECKS (Detroit Area, 1964)

In October and November 1964, Hill and his wife Sheila spewed bad checks (not sufficient funds) over the Detroit area. In certain instances they were aided by a third person, Robert Rice (not otherwise known to us). Most of the depridations occurred in the first half of October with a

(1) Bank of Livonia, from October 8th to October 15th cashed 14 checks totalling $252.02, for Sheila (she had opened an account at the bank) drawn to her order by Hill on the Madison National Bank, Madison Heights, Michigan. A complaint was made to the Livonia Police Department on October 22 and full restitution was made on October 25.

(2) The Shoppers Fair, Livonia, on October 8th and 10th, cashed three checks totalling $231.62, one for Rice and two for Sheila, drawn to their order by the George Hill Jr. Racing Stables, signed by Hill, on the Madison National Bank. Complaint to the Livonia police was made October 27; there has been no restitutions.

(3) Packer's Discount Inc., Livonia, cashed two checks, October 7th and 10th, each for $71.20 (total $142.40) drawn to her order by the George Hill, Jr. Racing Stables, signed by Hill. Complaint was made to the Livonia Police November 17, 1964; there has been no restitution.

(4) A & P, Livonia, cashed one check on October 8th, also for $71.20, of the same type. Complaint was made to the Livonia Police on November 17, 1964; there has been no restitution.

(5) The Detroit Race Course, Livonia, cashed 16 checks totalling $2362 from October 5th to October 10th of which 11, totalling $1902 bounced. Most were drawn by Hill on the Madison Bank to cash and a few were drawn by Sheila to Hill's order on the Bank of Livonia. A complaint has not been made to the Livonia Police; there has been no restitution.

(6) The Northville Downs Raceway, Northville, Michigan, caused Sheila Hill's arrest about the end of September 1964 for a number of bad checks cashed for her (details and amounts not known to us). Restitution was made and the charges were dismissed. We are informed that the Hills accused the raceway of discrimination during their stay there in 1964.

(7) Federal Department Store, Detroit, cashed two checks, one on October 8th for $71.20 and one on October 21st for $72.50, total $143.70, both drawn by Hill on the Madison Bank. Both were returned "Account Closed." No complaint was made to the police and no restitution has been made.

(8) Food Fair Markets (Borman Food Stores, Inc.), Detroit, in the last half of October 1964 and the early part of November 1964 cashed 22 checks totalling $1090.30, all drawn by Hill. Twenty were passed by Robert Rice, two by Sheila, those two bearing the "George Hi

Detroit Police; no restitution has been made.

(9) Wrigley Stores, Livonia, cashed 17 checks, totalling $1277, from October 5th to about October 19th, all drawn by Hill some to the order of Robert Rice, who negotiated those, and some to the order of Sheila, who negotiated those. All three have been indicted in Wayne County, Michigan. Hill and his wife Sheila were arrested in New York on February 20, 1965 on a Governor's warrant. The matter of rendition to Michigan is pending in Criminal Court, New York County (Part 1A). On April 9, 1965 the Wrigley Stores received a Western Union money draft for $1277 from Hill apparently sent to effect restitution. However, we understand that the warrant has not been withdrawn. *

(The two New York City detectives who arrested Hill were, in turn accused of attempted extortion by him. We are informed that the matter was presented to the Grand Jury but dismissed and that a departmental trial was recently concluded but we do not know the results.** Our knowledge of the details is based on newspaper accounts of February 22, 1965.)

(10) Charles Stoyka d/b/a "Chuck Stoyka' Service" (gasoline station), Detroit, cashed four checks, totalling $215 in the first half of October. Hill has been indicted on this charge also, in Wayne County but rendition on this charge has not been initiated. Restitution has not been made.

In summary, more than $5300 in worthless checks were passed in the October blitz (not including the checks cashed at Northville Downs, the amount of which we do not know). Restitution has been made in only three instances (Northville Downs, Bank of Livonia and Wrigley Stores) and then only when Hill faced prosecution.

NEW YORK AND ROOSEVELT RACEWAY

As already stated, Hill came to New York in November 1964 and obtained an owner-trainer's license at Yonkers Raceway. In mid-December 1964 he moved three horses into winter stalls at Roosevelt Raceway. On February 9, 1965 he was again issued an owner-trainer's license, a temporary one, good for 60 days to enable the commission to investigate the matters raised in the interview of February 4, 1965. On February 20, 1965 Hill and his wife Sheila were arrested in New York on the Michigan warrant (Wrigley Stores, Livonia). This was the first notice to us that

On March 3, 1965 the U.S.T.A. received at its office in Columbus, Ohio, a bill from the Hertz Corp. in New York for $341.54 for the rental of a car used by Hill in New York from January 9, 1965 to February 9, 1965. So far as can be ascertained the clerk who had handled the original transaction had concluded from Hill's representations that Hill was employed by the U.S.T.A. at its Columbus address.

Meanwhile, at Roosevelt Raceway Hill had accumulated a substantial number of unpaid debts. An agreement signed by him on December 9, 1964 required payment of the fees, a total of $450, in advance; Hill promised to pay when the horses arrived. They arrived on December 16, 1964, in Hill's absence. For the next three and a half months the stable manager "Cal" Coolidge, received only Hill's promises to pay, periodically made, via telephone.

A local groom Leroy Green, hired by Hill quit on February 12, 1965 after not having received his wages for four weeks ($270). A complaint by Green to the Labor Department eventually produced payment. Coolidge had advanced $50 of his own money to help Green out at one point. Thereafter, Roosevelt Raceway took care of the three horses for a period of seven weeks, merely to keep them alive. Demands by the Race Secretary Assistant Race Secretary and Stable Manager to Hill to remove his horses from the grounds (the stabling agreement provides for removal on 48 hours notice) were counted by him with accusations of race discrimination, threats of a picket line and, refusal to remove the horses. By the end of March, 1965, the accumulated debts (excluding the salary due the groom which had meanwhile been paid) exceeded $2,000.

On April 1, 1965 Hill finally appeared at Roosevelt Raceway and paid the following bills:

$450 for stall rental,
$245 for wages of caretaker for seven weeks, advanced by track,
$200 for feed purchased by the track,
About $400 to a J. Kelly for harness equipment,
$18 to a D. Spence, blacksmith
$30 to cover a bad check he cashed at the track cafeteria,
$50 to Coolidge for the advance to Leroy Green (this check has bounced twice and the debt remains unpaid)
Two other debts were then due and have never been paid:

$67 to the blacksmith, Kaphart,
$511 to the Standardbred Feed, Inc. for feed delivered on Hill's order when the horses first arrived. Hill told Coolidge he would not pay this bill until he was sued because the owner of Standardbred Feed had defamed him.

As of this date, April 1, 1965, the horses had not been "worked" in more than two and a half months and were completely out of condition for any competition. Moreover, these horses were far below the quality required for competition at a major track, like Roosevelt Raceway, even if they had been properly trained. Finally, the rental of the stalls was for a stated period ending April 1, 1965. None of these arguments could move Hill to remove his horses and two are still there/ as of June 30, 1965 (the third, the 13 year old "Land Cruiser", he moved out some time ago; it was too old for any competition, especially when out of condition). *

HILL'S FINANCIAL SITUATION, APRIL - JUNE 1965.

On April 9, 1965, in connection with an extension of his temporary license, Hill was interviewed by Investigator Caputo as to the state of his financial situation. Hill told Caputo (as he had told me on February 4, 1965) that his father was wealthy and owned a chain of grocery stores in Chicago. He said they were called the "Early Morning Grocery" and the main store was located at 4631 South Indiana Avenue, Chicago. He stated that his father had just given him a gift of $15,000. to enable him to repay his debts and to get started in New York. He displayed a thick roll of money to Caputo. He specifically stated that his only out-of-town debts were the amount due the Wrigley Stores ($1277) and the bill the Hertz Corp. sent "by mistake" to the U.S.T.A. ($341.54) and he presented proof of payment of both. As for the Roosevelt Raceway debts, he stated they had all been paid (Coolidge's $50 and Kaphart's $67 have not been paid as noted above) except the bill from Standardbred Feed which was in the hands of his lawyer. On the basis of his representations, Hill's license was extended to May 10, 1965.

The second and last extension of Hill's license was made on May 19, 1965 to expire June 30, 1965. In the period between April 9th and May 19th some of the information on Hill's earlier activities in Detroit had been received. In addition, R.H.Macy and Co., New York complained to the commission (apparently Hill had given the commission as a reference) that 21 checks totalling $1630 received from Hill during April and May for merchandise sold had been returned for "insufficient funds". On May 18, 1965 the attorney for R.H. Macy advised us that they had received full restitution, the payments having been made on May 15, 17 and 18. (These facts explain why Hill permitted the hiatus of May 10, when his license expired, to May 19 when he appeared at the commission office, to develope)

On May 19, 1965 Hill, accompanied by his attorney George P. Monaghan, appeared at the commission office and demanded that a regular license (not a temporary) be issued to Hill. Hill again claimed, as he had done on April 9th, that all his debts had been satisfied except for the Standardbred Feed bill and Mr. Monaghan assured me it would be paid in a few days. Despite his and his attorney's demands he was offered another extension, to June 30th, to enable the commission to complete its investigation, this purpose being openly stated to them, or a denial. Hill accepted the extension.

Thereafter, during June, the commission received additional complaints:

(1) Gimbels, New York, reported that five checks received from Hill from April 12, 1965 to May 7, 1965, totalling $445 had bounced. On May 19, Hill paid the amount in cash. From May 25 to June 15, seven more bounced, leaving an aggragate of $670 due. On June 17, Hill was refused credit on a $300 order for carpet; he thereupon complained to the store's General Manager that the Credit Manager was acting out of prejudice. The $670 had not been paid as of June 30th. *

(2) Frank Policastro, Glenbrook, Conn., started supplying feed on Hill's order the end of April. After difficulty in collecting on several deliveries Policastro refused further deliveries on credit. Hill accused Policastro of discrimination in refusing to extend credit and threatened bodily harm. Hill still owes Policastro $51.25.

(3) Harry Prime, cashier at Roosevelt Raceway, cashed19 of Hills checks, totalling $1475, from June 4, 1965 to June 12, 1965 of which 6 aggragating $670 bounced. As of June 30th Hill had paid back $100. *

(4) James Savin, operator of the horsemen's cafeteria at Roosevelt Raceway, cashed 12 of Hill's checks, totalling $530, from June 9, 1965 to about June 20, 1965, which bounced. As of June 30, 1965, nothing had been paid. A warrant for Hill's arrest was issued in Nassau County about July 15, 1965. *

(5) Standardbred Feed's bill of $511. had not been paid as of June 30, 1965 despite Mr. Monaghan's assurances made on May 19, 1965.

HILL SELLS PART INTERESTS IN HIS HORSES

During this last period (May 19 to June 30) we established that on March 31, 1965 Hill had sold a 5% interest in the three horses stabled at Roosevelt Raceway to a Dr. Tracy Parks of 10 West 135th Street for $3000 and on the same date sold another 5% interest to an Allan F. Wise of the same address, also for $3000. Dr. Parks and Mr. Wise are friends. From our conversations with them it appears that neither Dr. Parks nor Mr. Wise has sufficient, if any, knowledge of horses to realize each has been badly cheated. "Land Cruiser" is a 13 year old horse (the last year a horse is permitted to race is 14) and has not been worked this year. In 1964 it raced twice and earned

3 year old gelding, has never qualified (has no performance record); its breeding is undistinguished --none of its five brothers and sisters from its dam has gone to the races. In the absence of a recorded good performance, it also has no value in the market. The third, "Butch Dorwood" is an 8 year old gelding. In 1964, its total earnings were $2549. (Hill acquired it in August 1964 and in 5 subsequent starts it earned only $349.) Its record in 27 starts (1964) was 1-5-6. It won a $1300 handicap claimer at Toledo (a fast track) in 2:09.2. On November 15, 1964 Hill raced it in an $1100 claiming race and it was not claimed. Top price for this horse would be $1,500; a more realistic price would be $1,000. Hill represented to Wise and Dr. Parks that the horses were worth $60,000.*

On May 19, 1965 Hill was asked by me about a $3,000 transaction with an Allen F. Wise which had come to our attention. Hill stated unequivocally that the transaction was in no way related to harness racing, it being a personal matter between himself and Wise. As late as June 22, 1965 and in connection with ascertaining the procedure for entering "Butch Dorwood" in a qualifying race, Hill stated unequivocally to Administrative Steward Bloome that he was the sole owner of the horse. (Mr. Bloome had informed him that all owners must be licensed under our rules for the horse to be eligible to race; Hill, obviously, was unwilling to disclose that he had sold 10% interest in these horses for $6000.)

Hill had told Dr. Parks sometime in March 1965 that he desired to sell a $5000-$6000 interests in the horses in order to raise money to satisfy debts that were preventing his racing them. This refers us back to Hill's statement to Investigator Caputo on April 9, 1965, that he had received$15,000 from his father, the owner of a chain of grocery stores in Chicago for this purpose.

EARLY MORNING GROCERY

Investigator Rooks visited the "Early Morning Grocery and Market" at 4631 South Indiana Avenue, Chicago in June 1965. He learned the following: the store is a very small vegetable-grocery store in a marginal area and is the only store by that name in Chicago. The present proprietors Fannie and Earl McEwen, purchased it from George Hill, Sr. in 1951 for $2,000. Hill, Sr. had sold it because of financial

Mr. Rooks also visited the dwelling occupied by George Hill, Sr. and his wife Lutisha (not George Jr's mother). The house and its furnishings are very modest. Mrs. Hill informed Mr. Rooks that her husband obtains employment through the longshoremen's union office, that they have a small savings account, that about December 1964 George Jr. had tried to borrow money from his father but had been refused, that her husband could not afford to lend a large sum, that if any money had been loaned to Geroge, Jr. she would have known about it and she knew of none within the past few years. Mr. Hill, Sr. who spoke with Mr. Rooks subsequently on the telephone (he was not home when Mr. Rooks was there) was disinclined to discuss his son but did state that he had been helping his son all his life and in the past year and a half had lent him small sums perhaps aggregating $1,500. He did not know the purpose of the loans.

Relevant here is the information that Hill applied to the Mercantile All-In-One-Loan Corp., Chicago, in March 1964, for a $3,500 loan for the stated purpose of purchasing race horses. The loan was not granted.

* * * * * *

July 29, 1965,

I have been informed that Hill was arrested today/ by Nassau County police on a warrant issued on the complaint of the proprietor of the horsemen's cafeteria, Roosevelt Raceway (p. 19, above).

December 30, 1965

The following information has been received by the commission subsequent to my report of July 29, 1965:

## MORE ON THE HORSES

As of June 30, 1965, two of Hill's horses "Snappy Scot" and "Butch Dorwood" were still at Roosevelt Raceway; the third "Land Cruiser", had been removed from the raceway previously by Hill to a stable in Brookville, Long Island.* Hill hired a groom James Brown in June or July to care for the two horses at the track, but Brown quit after not been paid for three weeks. (Brown's claim of $225 had not been paid as of November 10, 1965 when he complained to the commission). Thereafter, the horses were unattended and received no feed other than what various horsemen gave them. Finally the A.S.P.C.A., acting on the complaint of "Cal" Coolidge, the Stable Superintendent, that the horses had been abandoned, removed them to its own shelter on August 11, 1965, and caused a warrant or summons to be issued against Hill on a penal charge of failing to provide proper sustenance. The charge was dismissed about October 21, 1965 after Hill paid the A.S.P.C.A.'s expenses and removed the horses.

As for the third horse, "Land Cruiser", Hill boarded it in the Brookville stable in May. As of early September when the commission received a complaint from the proprietor, Clemens Savage, Hill had paid nothing on about $500 accumulated bills. About November 1, 1965, when Savage sold the stable, he settled with Hill for $550 on $700 due. Hill promised the new proprietor, Walter Windhorst, to have the horse out by January 15. He has paid Windhorst $50 to date with the understanding that the balance will be paid on January 15th.

In September 1965, the U.S.T.A. forwarded a communication received from one G. Oliver Daniel of Detroit. Daniel complained that about a year previously he had paid Hill $2500 for a half interest in the above three horses and a fourth, "R. Michigander"**, and that Hill had since disappeared with the horses. Daniel stated he had put up $1000 of the total specifically to claim "Butch Dorwood" for themselves.*** We are again reminded of Hill's statement to Steward Bloome, made last June, that he was the sole owner of "Butch Dorwood".*

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* See Page 18.

** See Page 14.

*** According to Daniel's letter, Hill had come to him "with a story of despair badly in need of money supposedly to cover outstanding checks at Hazel Pk. in Detroit and money for operating his stable."

## ADDITIONAL FINANCIAL DETAILS

In June 1965, Hill went into the dress business with one Muriel V. Johnson under the name of the American Penthouse of Fashion with a place of business at 55 West 42nd Street, New York, N. Y. Hill signed the lease as a principal and a guarantor on June 9, 1965. On August 26, 1965, Hill and the firm were dispossessed for non-payment of rent and a judgment of $568.22 was obtained by the landlord. (We understand it has not been satisfied.) The managing agent of the building informed our investigators that he had heard that Hill had bilked Miss Johnson out of an investment of about $12,000. We have obtained this information only a few days ago and have not yet investigated further.****

We have also been informed that during October 1965, Hill paid the claims of Gimbels ($670), Harry Prime of Roosevelt Raceway ($570) and James Savin of the horsemen's cafeteria, Roosevelt Raceway, ($530)** (The criminal case against Hill in the Savin matter was dismissed after restitution.***)

## CASE OF THE NEW YORK CITY DETECTIVES

Reference is made to the 17 bad checks totalling $1277, drawn by Hill and cashed by his wife Sheila and a Robert Rice at the Wrigley Stores, Livonia, Michigan, during October 1965 (P. 16.)

Rice an 18 year old groom came to New York from Detroit, his home, with Hill in 1964. Rice, learning of the warrant for his arrest in Michigan wished to return there, but Hill refused him funds. Finally on February 17, 1965, Rice surrendered at the 28th Squad where he was detained while an inquiry was made to Michigan to ascertain if a warrant did exist. Not only was confirmation received on this point, but the existence of the warrants for the Hills was learned. A friend of Hill one Sobers, informed him that the detectives were willing to delay execution of the warrants on the Hills for a week while Hill paid up the Michigan debt. They wanted $300 for this. Hill reported the matter to the District Attorney and on February 19th, fitted with a recording machine and supplied with $160

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* See Page 20.

** See Page 19.

*** See Page 21.

**** In characteristic fashion, Hill claimed that anti-negro bias prevented the venture from obtaining adequate credit and caused its failure.

XERO COPY XERO COPY XERO COPY XERO COPY

in chemically treated currency, he came to the Squad office pursuant to arrangements made by Sobers. He talked with the two detectives (the recording was poor, but enough was recorded to confirm the conspiracy) and passed the money promising to pay the balance of $140 the following week. At a signal from Hill, officers of the P.C.C.I.U. entered the room.

Although the detectives and Sobers denied the conspiracy at the departmental trial, the hearing commissioner found that they, the detectives, had sollicited and did receive $160 from Hill lieu of arresting him and his wife as fugitives, had divulged official and confidential information to Sobers, that the Hills were wanted, had knowledge of the whereabouts of the Hills, but failed to arrest them and agreed to accept $140 from Hill at a future date as further payment. The hearing commissioner recommended the detectives be dismissed from the force. This was done.

According to the hearing commissioner's report, Hill testified he was a licensed harness driver, trainer, and owner (true at the time), had attended a college in Tennessee for a year and a college in Chicago for a year. He also testified to having attended a school of divinity and having received a degree of Bachelor of Divinity and a Masters in Theology. He stated he had never been convicted of a crime. He also stated he had run for the office of mayor in Detroit and had been active for many years in civil rights movements there. He declined to answer questions, on cross examination, as to whether he had publicly stated in Michigan that he had seen prison guards kill inmates during the time when he was confined for mental observation in connection with a civil rights arrest. Hill refused to answer many questions put to him by counsel for one of the respondents concerning possession of a gun and other matters. In many instances he declined to answer on the ground that the answers might tend to incriminate him.

The hearing commissioner commented: "Neither Hill nor Sobers are witnesses who inspire great confidence in either their truthfulness or reliability."

[It is an interesting coincidence that in this last case and in the so-called civil rights case which resulted in Hill's confinement in the mental institution (p.6) the amount supposedly to be paid to the police was $300. An unusual number of the bad checks passed by Hill in the Detroit area in October and November 1964 were drawn in the same or similar amounts--some $71.20 and some $72.50; about half the Wrigley checks were for $72.50 (pp.14-16).]

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS
270 BROADWAY, NEW YORK, N. Y. 10007
TEL.: BArclay 7-1616

GEORGE H. FOWLER
CHAIRMAN
BERNARD KATZEN
VICE CHAIRMAN
BESSIE A. BUCHANAN
J. EDWARD CONWAY
FRANCIS X. GIACCONE
LLOYD L. HURST
RUPERTO RUIZ

March 21, 1966

To Whom It May Concern:

Re: Case No. C-11952-65: George Hill vs.
NYS Harness Racing Commission, et ano.

This is to certify that the above entitled matter is before this Commission for reconsideration.

Mr. Jackson of the Yonkers Chapter of CORE called this office and stated over the telephone the fact that the records submitted by the Harness Racing Commission were not accurate and he stated also that a thorough investigation had been conducted by them and requested that the complainant be granted a conference. This was done and the complainant appeared before me on Monday, March 14, 1966.

At this conference, Mr. Hill stated that there were many discrepancies in the information submitted by the respondent Harness Racing Commission, and he agreed to submit documents (which have been received by the Commission).

These documents are being reviewed by our General Counsel's office to determine the validity insofar as making a decision to reopen this case on my own motion under Rule 12 of the Rules Governing Practice and Procedure, and for a review of the previous determination.

Ruperto Ruiz, Commissioner

#97

Applicant
3/23/66
D-J.

August 12, 1965

Mr. Marian Tolsom
c/o Vernon Dancer
Yonkers Raceway
Yonkers, New York

Dear Mr. Tolsom:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. Honor Dunkentell
Batavia Downs
Batavia, New York

Dear Mr. Dunkentell:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. Wilford Evans
Temperanceville
Virginia

Dear Mr. Evans:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. Hugo Fleming
Cliffwood
New Jersey

Dear Mr. Fleming:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. Fred Griffin
Batavia Downs
Batavia, New York

Dear Mr. Griffin:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. Lewis Price
Batavia Downs
Batavia, New York

Dear Mr. Price:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. John Adams
Paulsboro
New Jersey

Dear Mr. Adams:

In recent week a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

August 12, 1965

Mr. Robert D. Bomar
Batavia Downs
Batavia, New York

Dear Mr. Bomar:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

August 12, 1965

Mr. Boysie Mitchell
Westbury
New York

Dear Mr. Mitchell:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,

Stephen M. Nagler

STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

August 12, 1965

Mr. Max Lee
Meadows Raceway
Philadelphia, Pa.

Dear Mr. Lee:

In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this informaton on to us too.

I anxiously await your reply.

Very truly yours,
Stephen M Nagler
STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

August 12, 1965

Mr. Al Washington
Meadows Raceway
Philadelphia, Pa.

Dear Mr. Washington:

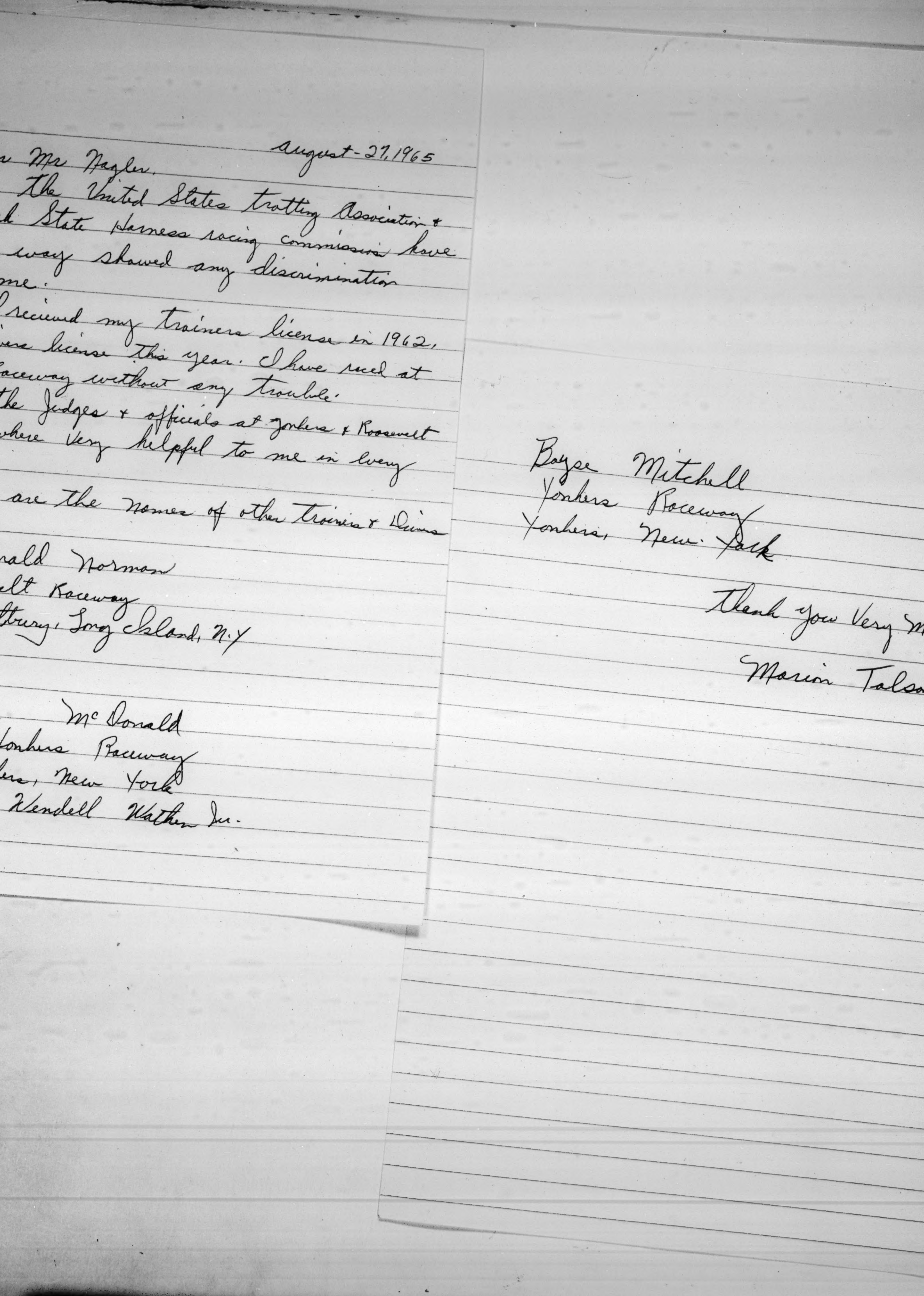
In recent weeks a number of allegations have come to CORE's attention regarding racial discrimination in harness racing. We regard these as adequate to merit a full investigation on our part of the role of the Negro in harness racing.

Any information which you can provide to us regarding your experience with the New York State Harness Racing Commission, United States Trotting Association or any of the raceways with which you have come in contact would be of great assistance. If you have heard of other Negro drivers who may have been discriminated against please pass this information on to us too.

I anxiously await your reply.

Very truly yours,
Stephen M. Nagler
STEPHEN M. NAGLER, Esq.
CORE Legal Department

SMN:bb



August-27, 1965

r Mr Nagler.

the United States trotting Association &
k State Harness racing commission have
way shawed any discrimination
me.

I recieved my trainers license in 1962,
vers license this year. I have raced at
Raceway without any trouble.
the Judges & officials at Yonkers & Roosevelt
where very helpful to me in every

are the names of other trainers & Drivers

nald Norman
elt Raceway
tbury, Long Island, N.Y

McDonald
Yonkers Raceway
ers, New York
Wendell Wathen Jr.

Boyce Mitchell
Yonkers Raceway
Yonkers, New York

Thank you Very M

Marion Talso

Temperanceville, Va. 23442
Box 86
August 31, 1965

Mr. George Schiffer
40 East 49th Street
New York, N.Y. 10017

Dear Mr. Nagler:

We are very pleased with the interest you are showing in Negro drivers in Harness Racing.

I have been racing horses for at least eighteen (18) years and have found most of the difficulty in the past three (3) years; although the other years should very little welcome.

In 1963 I was denied a drivers license by the United States Trotting Association for one (1) full year. This derived from a race at the Kent and Sussex raceway in Delaware The United States Trotting Association issues a rule book to each driver which states that before a driver's license is denied there should be a hearing before the Official board. This I didn't have. I never had any consideration at all, and did not know I couldn't get a license until racing time of that year. We made several phone calls to them and many letters concerning the matter, but didn't get them until the following year. This was quite an imposition as it caused me to lose several hundred dollars by paying other horsemen to drive for me.

I have raced horses in many states of the United States and also in Canada and have found they do not care to give stalls to me at several tracks. This is at Liberty Bell Raceway in Pennsylvania, I applied for stalls two months prior to the dead line for application. Here they held a spring meeting and a summer meeting. They proclaimed that my application in the spring was for the summer meeting. (I Knew it wasn't). I let this go one; when the summer meeting opened they still said I couldn't get stalls.

I usually drive my own horses and occassionally for a few white men; however at this same track I had a white man's horse to drive and the owner (a white man) Phoned and told the official (Jim Lych) that he wanted a stall for his horse — he immedeatly told him to send the horse up, he had room for it. They didn't Know that I was a partner in half interest in this horse.

There are several instances that I could relate regarding the tracks.

I did not apply for stalls in New York this year, but will for the coming year - and will be grateful for any assistance that you may give.

Sincerely Yours
Wilford Evans

Steve Nagler, Esq.

POLIER AND TULIN
ATTORNEYS AND COUNSELLORS AT LAW
22 EAST 40TH STREET
NEW YORK, N.Y. 10016

SHAD POLIER
STEPHEN WISE TULIN
ERIC ROSENFELD

AREA CODE 212
OREGON 9-5030
CABLE: POLMIDARM NEW YORK

COPY

December 21, 1965

State Harness Racing Commission
820 Second Avenue
New York, New York

Attention: John Dailey, Esq.
Assistant General Counsel

Re: George Hill

Sirs:

This is notice that I no longer represent George Hill. Please direct all communications in the proceeding involving him to him at The President Hotel, 234 West 48th Street, New York, New York.

Very truly yours,

ERIC ROSENFELD

ER:SS

cc: Mr. George Hill

blind copy: Steve Nagler, Esq.
CORE

Steve: will call to
explain. E.

Re ~~Gorge~~ Hill File
Send to St Comm. for Human Rts
Roosevelt Raceway
Black trainers can't get
stalls for horses

Box 86
Temperanceville, VA. 23442
November 14, 1966

Mr. George Schiffer
40 East 49th Street
New York, N.Y 10017

Dear Mr. Schiffer,

Some time ago we heard from you asking for our problems in the sport of harness racing, and at that time I sited to you the trouble of getting stalls at Liberty Bell Raceway in Pennsylvania. (If this is out of your territory, please forward to the proper officials of the C-ORE in that locality)

This problem still remains the same although it has been a year ago. I am still unable to get stall applications in Liberty Bell.

It is every time that I apply I am denied stalls at the very last minute which makes it impossible to get other track applications in time for their meeting.

I drive my own horses and am one of the oldest Negro drivers and all the officials there know that.

James Lynch, racing secretary, has charge of the stalls and seems to be very ~~predjuce~~ prejudice.

Frankly, I want to race at Liberty Bell because it is nearer my home and is more convenient to me than going further north, yet all in all they seem to not care for Negro drivers there.

I would appreciate very much if your branch or the Pennsylvania branch of the C.O.R.E. would give this matter your attention.

Sincerely Yours

Wilford Evans

[N.D.]

STANDARD BRED OWNERS Assn.
516 ED 3-5663

Howard C. Dobler

Negro Drivers
(incomplete list)

| | | | | |
|---|---|---|---|---|
| Adams, John | Paulsboro, N. J. | Driver | 5790 - '63 | |
| Bomar, Robert D. | ← BATAVIA DOWNS<br>Batavia, N. Y. | Tr-Dr | 5798 - '65 | |
| — Dunkentell, Honor | Batavia<br>~~Rochester~~, N. Y. | tr-Dr | 6733 - '65 | |
| / Evans, Wilford | Temperanceville, Va. | Owner-Tr-Dr | 7389 -'65 | 703 824-4509 |
| Fleming, Hugo | Cliffwood, N. J. | Owner-Tr-Dr | 7098 - '65 | |
| Griffin, Fred | Batavia<br>~~Buffalo~~, N. Y. | Driver | 7246 - '65 | |
| Meadows RACEWAY; PHILADELPHIA, PA. ✓ Lee, Max | So. Pine, N. Car. | Tr-Dr | 12343 - '64 | 919-692-2966 |
| ~~Meadows~~ (Phila) ✓ Mitchell, Boysie | ~~Westbury, N. Y.~~ | Tr-Dr | 4732 - '65 | 516 ED3-6526 |
| ✓ Price, Lewis | ← Batavia Downs ~~Buffalo Raceway~~<br>~~Caledonia, N. Y.~~ | Owner-Dr | 7297 - '65 | 716 KE8-4869 |
| Washington, Al | Bedford, Pa. Meadows, Raceway Phila Pa | Owner-Tr-Dr | 19399 - '64 | |
| X Worlds, Robert | Old Bethpage, N. Y. | Owner-Tr | 1549 - '65 | |

c/o Horsman's ASSOCIATION
Batavia Downs.

716-649-1280

~~(Bert Mafas) starter at Buffalo~~

TOLSOM, MARIAN YONKERS RACEWAY (c/o VERNON DANCER) ook a 20 minute rest, then Charlie's Penny.

hen I'll talk to the trainer what to do," he said. "I'll os as close as possible."

started Ussery broke from the He moved into second by the tering the stretch he was first gth and a half ahead of En

red to the jockey's room the ng "Do The Hucklebuck" in The business day was over rce. It was business but the knows it.

another 20 years," he said a lilt. "After that I'll be a el of getting up early in the around horses.

steam bath and I got the orld."

## Old Stuff

he sure lives like one. Has his health, too. You obviously went out on a limb and sawed it off when you lumped him with those unfortunates. He's too intelligent to go their way.

You mentioned Carter, Saxon, and Hurricane. You might have added Beau Jack, too. But the fact is that their type of tragedy is becoming rare these days.

In the "Golden Era," the sidestreets off Broadway were of desolate, shuffling figures who had been robbed of their ring earnings by the greedy, heartless, spendthrift managers you laud as free men who "didn't have to kick back to any monopoly or mobsters."

Some of them, if you want to know the truth, DID kick back. And those who didn't have to were even more reprehensible because there was no gun at their back. They spent their fighters' blood money on booze and blondes—and wound up as broke as the guys they stole from. Any unbiased oldtimer can name you a dozen of this kind of pirate without taxing his memory—just as he can recall the honest ones as well.

police protected me from

# OUT OF THE PACK [N.D.]

## *Old War in a New Place*

### By Warren Pack

The least integrated of sports is racing. Harness racing, like its cousin, thoroughbred racing, has Negroes, mainly in grooms jobs.

The Negro driver is not quite as rare as the Negro jockey, but you can count their number on two hands.

Which brings up a new battle going on behind the scenes in harness racing, one which will involve CORE and NAACP.

PACK

The word came in a telephone call from a Negro trainer, who must remain nameless. He has lost his license to operate in this state, and what has him angry is the runaround he claims he is getting from the New York Harness Racing Commission.

He also claims that a State official (not on the Commission) told him:

"We don't want your kind of Negroes around here trying to integrate harness racing."

"I don't know what he meant," the driver said. "I have told other Negroes that they should get into this sport, but not as a groom. We should have an equal opportunity."

★

He lost his license because of some problems in his home state of Michigan, involving, mainly, some bad debts, which he later cleared up.

"I had been licensed as an owner, trainer and a driver back there, but in New York they only licensed me as an owner and trainer. When I protested, they wouldn't tell me anything.

"I finally went to see George Monaghan (the former boss of the Harness Racing Commission) and he talked to the present Commission, but obviously he couldn't get anywhere.

"Now I am really mad. I have no way to support my wife and five children except through harness racing. I have talked to representatives of CORE and of the NAACP and they have agreed to help me."

The actual injustice in this case is hard to prove. The driver has had a record, minor as it may have been. But it does point up the fact that a Negro in harness racing has the odds against him, heavily against him. Up until five years ago, the majority of owners and trainers were either Southern born or now resided in the South.

A few guys have tried to make the grade, like Boyse Mitchell, Maxie Lee and Donald Norman. Norman had the best shot because he was broken in by a fine fellow, Jimmy Cruise, who gave him a real chance. Now, Don has his own stable.

There has been quite a bit of prejudice in the paddock. There was the famous case involving Sacher Werner, one of the few Jewish trainers, who forced a rather bigoted veteran to apologize for anti-Semitic remarks.

Some of the larger stables which operate out of this area like to call Yonkers and Roosevelt "the Jew tracks." This gives them some form of vicarious satisfaction, no doubt. One of the reasons for the big fight between the U. S. Trotting Assn. and the big mutuel tracks was the anti-Semitic feelings and expressions of some top horsemen, whom we won't even identify.

★

Unfortunately, no one is trying to clear up the mess. Neither the U.S.T.A., nor the Commission, nor the horsemen's various organizations nor the tracks themselves are attempting to make it easier for a Negro to get a shot at a job. In fact, there aren't too many Negro mutuel clerks, either, are there?

Getting back to the fellow who made the complaint, knowing Bob Glasser to be a man entirely devoid of prejudice and also a man who knows how to enforce justice, I believe that if the complaints are valid, that the commission will take action.

Unfortunately—there's that word again—there is no way to strip a man of his bias, and so even if this guy gets his license, he still will be an outcast when he is in the paddock.

[N.D]

# Threaten Picketing At YR Inaugural

**By Wes Gaffer**

The Yonkers chapter of the Congress of Racial Equality (CORE) yesterday threatened "demonstrations, tieups and picketing" for the opening of Yonkers Raceway tomorrow night. Albert Jackson, chairman of the chapter, made the decision known to Yonkers president Martin Tananbaum.

Jackson said the group's executive board voted unanimously to endorse the efforts of George Hill Jr., a Negro horseman, to obtain a driver's license from the Harness Racing Commission. Hill was denied a license last June 30, the commission citing, according to its counsel Bert Sarafan, Hill's "general bad character, his lying about his criminal record and his record as a bad check passer. Sarafan added:

"**THAT LAST CHARGE** alone is enough to totally disqualify him for a license under the provision for financial responsibility. When his license was denied, Hill filed discrimination charges with the State Human Rights Commission and that body, on Sept. 30, ruled the charges were baseless. Hill has a history of raising the racial question whenever he's in trouble. The New York City chapter of CORE will have nothing to do with him."

Hill's record, according to the harness racing commission, shows a bad conduct discharge from the Air Force, reduced, after a second dishonorable discharge, to a general discharge. Hill also spent 3½ years in a hospital for the criminally insane.

**TANANBAUM, IN** a statemen said: "I explained to Mr. Jackson that the licensing of Hill as a driver and the licensing of any other track personnel. . . is solely under the jurisdiction of the... commission. Thus, Yonkers Raceway could not in any way be held responsible for the issuance or denial of a license.

"I am issuing this statement so our patrons fully understand why there are pickets scheduled to be stationed at our racetrack."

Warrants & Prospective Warrants 233-9604

Sonn Brezner, 962-9210 (Detroit).

↓ GEORGE HILL

N.Y. County 1. Detroit – Borman's Food Stores ($1156.30)

Really Rich. – 9/10

2. GIMBELS – Dept. Store ($500 no warrant yet). (Mr. Gordon)

Nassau 3. – R.R. ($570) – Valley Stream

4. Israel Savin – $530

5. ASPCA – ~~$~~Abandonment of horses.

George Hill, Jr.     8/12/66

Horses removed from R.R. on Monday by ASPCA. ~~Warrant issued~~ (Col. Rawlins TR6-7700) Warrant issued in Nassau (Judge. Morrison) on complaints of Al Weil & other R.R. officials. Mr Starrys (Asst DA) was before ct. ~~[illegible]~~ Charges are for (1) abandonment & (2) neglect of horses.

11 negro drivers

never asked

George Hill

Paid
for years,
never arrested
for non-support.
?

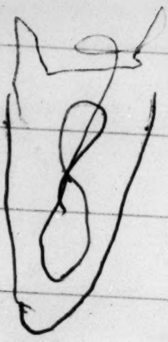
1. Wives (3)
$10/week support – never paid,
May, Helen. ← & now #3.

2

2. ~~Earned 1964.~~ UNITED Theological Seminary,
Hill's own – died 1960 – Hill claims 4
years of college.

3. Total earnings $74 – 1964

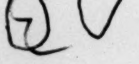
4. Says he Earned much more.



Dr. Tracy B. Parks } each bought 5%
Allen F. Wise } of horses March '65 for $3000 each.
← Gave him check for which he stopped for insufficient funds. P & W came in in March 30th –
He has denied any other owners. → applied 2/9/65.

8

5. Still owes $500. – Standard feed.
Pollicastro – $51.
not important



6. Macy's – $1600 – ~~..~~ paid 5/18.
Gimbel's – $670.

7. Detroit – $143 – Federal Dept. Store.

8. Chicago – arrests for Dis. Con. – not mentioned
acquittal
'50 – '53
Speeding & resisting arrest.

9. Early Morning Grocery. chain,

10. Credit Data Corporation listed about 20 "~~losses~~" in Detroit. — 1959 → June 23, 1965.

11. ~~Sentence~~ Detroit – 2 fines, & 90 day sentence.

12. United Baptist Church or
Little Rock " " — non existent.

13. U. Theo. Seminary — 3 mos. back rent.
Existed for only ~~6 mos.~~ July '57 – ~~July~~ '59.

14. Other Detroit warrant – 4 bad checks total under $500.

15. Adjudged criminally insane by 3 doctors;
Larceny by trick or embezzlement – dismissed
w.o. prejudice? — 1954.

16. Bd of Elections – only sample petition.

17. Bank of LIVONIA reported (1964) — 15 bad checks ~~for~~ totalling about $200. Paid off. ([illegible]).

18. Wrigley Stores (Livonia) – Passed in 10/64 – $1277
1d ~~[illegible]~~ checks, Paid off, ~~Now~~ but still want him extradited.

19. A&P. – Livonia $21.20, & $65 (2 checks).

20. Food Fair – $1090 not paid. 10/64, – 21 checks.

21. Detroit Track – 10/5 – 10/10 – $1902 – not paid.

22. Northville Downs Raceway — $3.—
23. Shopper's Fair — 2.

---

USTA

applied in 1963 for license; —

I investigated

Illinois gave Fair license in spite of prior arrests.

Mich Racing Comm. - May 1 '63 - license granted. Got credit report. & claimed 1953 (his report). Arrested on traffic warrants, bastardy charge. Granted license when he threatened to picket.

USTA granted license early in 1964 - suspended July 6, 1964 for financial irresponsibility

Lorraine (capital) — $600 — never paid.
Provins Prescription — $509.38 (Ill
Dr Morandil — $157. — never paid.
Ill., Feed — $214 —.
O. (Chicago) Hertz — $797.20
(Ohio) McKain (shoeing horses) — $80.00 — never paid.
(Ohio) Crawford (horse van) — $350.00 " "
(Toledo) Collection Svce — $600.00 — " "

paid.

Then he complained & license granted July 16, temporary to 9/1 to enable firm to pay off his obligations which led to suspension. Aug 31, he paid off. Only noted things dealing w. business.

---

NYSPCA - got after Roosevelt Raceway - because he left horses unattended for 7 weeks. (Dec 64, 1/65).

He says not true

Away from 2/13 to 4/2 while horses took care of hors

COLUMBIA LAW SCHOOL NEWS Monday, March 6, 1967

# Students Seek End to Racetrack Bias

**ALLEGE DISCRIMINATION: THESE law students are members of a group assisting Reverend George Hill, Jr., a Negro, in obtaining an owner-driver-trainer license for harness racing. Hill was allegedly denied the license solely because of his race. Seated, l. to r., are: Michael Zola, Antone G. Singsen III, and John Romans, all '67. Standing, l. to r., are: Ron Mitchell '69, Gary Naftalis '67, and Harold Ickes '67.**

By Don Panush

A press conference was held Thursday, March 2, in Room E of the law school by Rev. George Hill, Jr., his attorney, William Kunstler '48, and ten Columbia law students who have come together to assist Hill.

The purpose of the conference was to discuss the case and future legal action of Hill, a Negro, who is seeking to obtain an owner-driver-trainer license for 1967 in New York State.

"Harness racing, unlike most professional sports, has generally remained closed to Negroes," according to Antone Singsen III '67. "Although a small number of Negroes have been licensed to drive in New York, there are no Negro harness drivers who regularly race at present."

**Started in 1964**

According to Singsen, Hill began his long and so far unsuccessful attempt to obtain a license in 1964. When he came to New York, he already possessed owner-trainer or driver-trainer licenses from four states, as well as a U.S. Trotting Assn. license.

"Rev. Hill's lack of success in obtaining a New York State license is surprising in light of his qualifications and experience," said Singsen. "The circumstances accompanying the Harness Racing Commission's refusal to license him, such as the extraordinarily long and delayed hearings, as well as the discriminatory conduct of Commission personnel, militate strongly towards a conclusion that racial discrimination is clearly involved."

"The charge of discrimination," continued Singsen, "is further supported by an examination of the Commision's action for the past two and a half years. The hearings on Hill's license application were characterized by persistent stalling. While most applications are processed in a brief and pro forma manner, the proceedings on Hill's 1965 application lasted from February 9, 1965, until May 20, 1966.

"It took the Commission four and a half months to make a preliminary ruling and nearly a year more to hold and conclude a hearing. In fact, the Commission concluded the proceedings only under compulsion of a court order."

**Reasons Changed**

Another piece of evidence of unfair treatment, according to Singsen, is discerned in the way the Commission has changed its reasons for denying Hill's successive applications.

"Although the original denial was based on three separate grounds, the Commission, through repeated retractions, has had to rest its latest refusal solely on the vague and meaningless statement that Hill lacks 'general fitness' and that licensing him would be contrary to the "best interests of racing". Moreover, no specific findings are made to substantiate this statement.

"Coupled with these actions," continued Singsen, "is the Commission's consistent practice of drawing the most unfavorable inferences about Hill's activities, disregarding both the record and actual fact. The results of this practice have not been confined to New York. Since a denial of a license in one state is grounds for denial in most other states, Rev. Hill is effectively precluded from earning a living in racing everywhere."

The attention of the law students became focused on Hill's case when Michael Zola '67 met Hill by pure chance while both were waiting for a plane at Kennedy Airport on Christmas Eve and began talking to him.

In addition to Singsen and Zola, other Columbia law students involved are Gary Naftalis '67, Harold Ickes '67, John Romans '67, Steve Steinglass '67, Napoleon Bonaparte Williams '67, Robert Cover '68, Charles Fabrikant '68, and Ronald Mitchell '69.

HODGE, GLORIA et al VS. DEPARTMENT of PUBLIC WELFARE FLORIDA 1968-1969

Box 37
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Historical Society of Wisconsin

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

| | | |
|---|---|---|
| GLORIA HODGE, et al., | ) | |
| Plaintiffs, | ) | |
| vs. | ) | MEMORANDUM IN SUPPORT OF APPLICATION FOR THREE JUDGE COURT AND IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION |
| THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, et al., | ) | |
| Defendants. | ) | |

## I

## THIS COURT HAS JURISDICTION OVER THIS MATTER AND A THREE JUDGE COURT MUST BE CONVENED TO HEAR THIS CASE ON THE MERITS.

### A. Jurisdiction.

The jurisdiction of this Court is invoked under Title 28 U.S.C. §§1343(3) and 1343(4), providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. §§1983 and 2000(d); jurisdiction is further conferred on this Court by Title 28 U.S.C. §§2201 and 2202 relating to declaratory judgments.

This Court has jurisdiction pursuant to Title 42 U.S.C. §1983. See, e.g., Zwickler v. Koota, 389 U.S. 241 (1967); McNeese v. Board of Education, 373 U.S. 668 (1963); Monroe v. Pape, 365 U.S. 167 (1961); Thompson v. Shapiro, 270 F.Supp. 331 (D. Conn. 1967); Green v. Department of Public Welfare, 270 F.Supp. 173 (D. Del. 1967); Lamont v. Roberts, Civil Action No. 67-1056 (S.D. Fla.); Blackmon, et al., v. Department of Public Welfare, Civil Action No. 68-536 (S.D. Fla.), dismissed on other grounds; Damico v. California, 389 U.S. 416 (1967); King v. Smith, 392 U.S. 309 (1968). See Note, Federal Judicial Review of State Welfare Practices, 67 Colum. L.Rev. 84 (1967).

Jurisdiction under Title VI of the Civil Rights Act of 1964, Title 42 U.S.C. §2000(d), with regard to claims of racial discrimination in federally funded projects has been sustained in Bossier Parish School Board v. Lemon, 370 F.2d 847 (5th Cir. 1967), cert. denied, 388 U.S. 911. In that case, for technical reasons, jurisdiction under Title 42 U.S.C. §1983 may have been lacking.

B. Three Judge Court.

Three judge courts have been convened in many cases charging denial of equal protection of the laws in the administration of public assistance programs, King v. Smith, 392 U.S. 309 (1968); Damico v. California, supra; Blackmon v. Department of Public Welfare, supra; Lamont v. Roberts, supra; Simpson v. Department of Public Welfare, Civil Action No. 68-1330 (S.D. Fla.).

Three judge federal courts have rendered decisions favorable to welfare applicants or recipients on equal protection grounds in the following cases: Thompson v. Shapiro, 270 F.Supp. 331 (D. Conn. 1967)(residency); Green v. Department of Public Welfare, supra (residency); Harrell v. Tobriner, 279 F.Supp. 22 (D. D.C. 1967)(residency); Smith v. Reynolds, 277 F.Supp. 65 (E.D. Pa. 1967)(residency); Ramos v. Health and Social Services Board, 276 F.Supp. 474 (E.D. Wisc. 1967)(residency); Johnson v. Robinson, Civil Action No. 67-C01883 (N.D. Ill., Dec. 28, 1967) (residency); Robertson v. Ott, ___ F.Supp. ___ (Civil Action No. 68-211-G, D. Mass. 1968); Anderson v. Schaeffer, ___ F.Supp. ___ (Civil Action No. 10443, N.D. Ga. 1967)(employable mother rule); Stallworth v. California, ___ F.Supp. ___ (Civil Action No. 48393, N.D. Calif., Dec. 13, 1967)(recovery of prior overpayment). Once the three judge court is convened it has jurisdiction to hear the claims based on invalidity of state law under the Social Security

Act as well as under the Constitution. King v. Smith, supra; Note, "Federal Judicial Review of State Welfare Practices," supra, at 108.

As Chief Judge Brown recently stated in an opinion concerned with the convening of three judge courts: "[W]hether the question presented is properly a 3-Judge matter is initially for the determination of the 3-Judge Court." Jackson v. Department of Public Welfare, ___ F.2d ___ [Misc. No. 1071, _____, November 25, 1968], 5th Cir. on Writ of Mandamus from Civ. Action No. 68-568-Civ-EC (S.D. Fla.). The opinion continues:

> Except for cases on which there can be no doubt at all, the alternatives to certification and the constituting of a 3-Judge court are unsatisfactory and administratively disadvantageous with no compensating redeeming virtue of a substantive kind. Id., opinion at 4.

## II

## A TEMPORARY RESTRAINING ORDER SHOULD BE GRANTED IN THIS CASE.

A temporary restraining order amounts to a preliminary or interlocutory order to keep the subject of litigation in status quo, Stewart v. Dunn, 363 F.2d 591 (5th Cir. 1966), or to keep the applicant from suffering irreparable injury pending the more formal hearings on the motion for a preliminary injunction, Baines v. City of Danville, Va., 357 F.2d 756 (4th Cir. 1964), aff'd mem., 384 U.S. 890 (1966). See also, Woods v. Wright, 334 F.2d 369,375 (5th Cir. 1964). The motion in the instant case is for both purposes.

The temporary restraining order is an especially apt remedy when the plaintiffs are welfare recipients. E.g., for language in opinions granting temporary restraining orders to welfare recipients in various situations: Van Blaricum v. Department of Public Welfare, Civil Action No. 68-78 (S.D. Ohio, temporary restraining order granted in "prior hearing before termination of benefits" rendered on March 8, 1968; temporary restraining order continued, April 5, 1968); Wheeler v. Montgomery, No. 48303 (N.D. Cal., temporary restraining order granted December 20, 1967, "prior hearing"); temporary restraining orders granted this year in the following welfare residency cases, Ramos v. Health and Social Services Board, No. 67-C-329 (E.D. Wisc); Mantell v. Dandridge, No. 18792 (D.C.Md.); Johnson v. Robinson, No. 67C-1883 (N.D.Ill); Porter v. Graham, No. 2348 (D.C.Ariz); and others. All of these cases except Wheeler have progressed favorably to, at least, the granting of a preliminary injunction.

By the Department of Welfare's own standards, the plaintiffs presently only have funds sufficient to meet 65% of their needs. Surely any change in their already desperate situation warrants the minimal consideration of the preservation of status quo until plaintiffs have an opportunity to be fully heard. As the verified complaint of the plaintiffs shows, plaintiffs are attempting to exist on amounts which do not even begin to meet their needs. The precariousness of such an unhealthy existence which forecloses even an adequate diet causes, per se, irreparable injury to their lives. The obviousness of the irreparable harm which would result to the named plaintiffs and others in their class should the reduction not be enjoined is painfully clear. As a three judge court in the Southern District of New York said last month:

> [T]here is one overwhelming fact which controls here. By hypothesis, a welfare recipient is destitute, without funds or assets.

* * * *

> Suffice it to say that to cut off a welfare recipient in the face of this kind of 'brutal need' . . . is unconscionable unless overwhelming considerations justify it. Kelly v. Wyman, 68 Civ. 394, 68 Civ. 864, 3 judge court, S.D.N.Y. November 26, 1968 at 9,12.

The Court emphasized, "The stakes are simply too high for the welfare recipient". If this is true in New York where one of the nation's highest schedule of payments is in effect, it is doubly true in Florida where payments are consistently among the lowest in the country. The loss of income envisioned in the cut is immeasurable - - it can mean the difference between some food and none, between a place to stay and eviction, between a young child attending school or becoming truant for lack of shoes or adequate clothing - - a not unusual situation for children on welfare.

In a case identical to the present one (involving a 10% across-the-board reduction of AFDC grants in Louisiana), the court granted a temporary restraining order the day the case was filed. Lampton v. Bonin, Civil Action No.68-2092, §E (E.D. La., Nov.14, 1968). (See attached copy which reflects an incorrect date of October 14, rather than November 14).

## III

## THE STATE ADMINISTRATIVE ORDER REDUCING ALL AFDC RECIPIENTS' BENEFITS FROM 65% OF NEED TO 57% OF NEED IS A CLEAR VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

### A. Statutory Setting

The Florida Public Assistance programs of Old Age Assistance (OAA), Aid to Families with Dependent Children (AFDC), Aid to the Disabled (AD) and Aid to the Blind (AB), are all substantially supported by the Federal government pursuant to the Social Security Act of 1935, as amended, Title 42 U.S.C.§§601 et seq. These statutes and the regulations promulgated thereunder set the limits on freedom of administration of categorical assistance programs by the participating state.

The dominant purpose of categorical assistance is to relieve need. Each program is introduced in the Social Security Act by statement of this goal:

> For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals . . . (42 U.S.C.§301)
>
> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance . . . to needy dependent children . . . (42 U.S.C.§601)
>
> For the purpose of enabling each State to furnish financial assistance . . . to needy individuals who are blind . . . (42 U.S.C.§1201)
>
> For the purpose of enabling each State to furnish financial assistance . . . to needy individuals . . . who are permanently and totally disabled . . . (42 U.S.C.§1351).

In furtherance of the Federal objectives, Chapter 500 of the Florida Public Assistance Manual states:

> The purpose of the ADC program is to provide financial assistance and other services to those children who have been deprived of the parental support or care of one or both parents to assure them the opportunity of growing up in a setting of their own family relationships.
>
> To live in a family to which he belongs is the foundation of a child's security, and the financial inability of the family to meet the child's needs should not be allowed to force a parent to surrender responsibility for bringing up the child. The provision of financial assistance and other services through the ADC program is directed toward strengthening family life.
>
> Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children, with efforts directed toward helping parents provide their children with a home life conducive to healthy physical and emotional growth and development, and opportunities for adequate health care, education and vocational training in accordance with their capacities, and for

participation in community life. Strengthening family life relates to the family as a unit and the role that each member plays within the family. In strengthening family life emphasis is on enabling parents to carry responsibility for their children.

To accomplish these goals the purposeful use of the worker's relationship with the parents to help them deal with their families' needs and problems is a basic service in all ADC cases. This involves a continuing assessment of problems, capacities and interests with parents and accordingly making necessary adjustments in the casework plan.

B. The Reduction.

In carrying out the purpose of the AFDC program, the State Department of Public Welfare prepares a budget for every applicant for assistance by which it calculates monthly financial needs. Its standards are admittedly quite low. From the Need figure is subtracted the amount of any outside income actually received.(from employment, support, etc.) The remainder is the budgetary deficit. 65% of that deficit composes the present assistance grant. The 35% of the deficit that is left over remains unfulfilled. The State now proposes to reduce the percentage of the budgetary deficit which will be met from 65% to 57%. In other words, under the reduction, plaintiffs will only receive a little more than half what they need to exist - - or will suffer a 43% unfulfilled minimum need.

The reduction, announced in Operations Letter No.1680, November 14, 1968, will reduce AFDC grants, and only AFDC grants, while leaving all other categorical assistance programs unchanged. Acting on a projected inadequacy of public assistance funds for fiscal 1968-1969, the Department of Public Welfare has discriminated against AFDC recipients by isolating, without legislative warrant, needy children from needy persons on any of the AABD (Aid to the Aged, Blind and Disabled) Programs and reducing the AFDC grants and not those of the blind, disabled or aged.

C. The Equal Protection Argument.

The essence of complainants' equal protection claims is that there is no relevant constitutional distinction between the need of the indigent aged, the need of the indigent blind, or the need of the indigent disabled, on the one side, and the need of the indigent child on the other. For the approximately 33% of the State welfare budget represents AFDC grants to bear the entire burden of the reduction is patently unconstitutional.

Florida determined the need of each recipient when it calculated the budgetary deficit. To decide to reduce AFDC grants while leaving untouched the remaining non AFDC expenditure bears no rational relation to the purposes of the federal categorical assistance programs. The overriding purpose in the Federal scheme, as has been pointed out, is to relieve need. Florida is bound by the Equal Protection Clause of the Fourteenth Amendment not to act arbitrarily or capriciously in relation to that need. As the three judge court in Smith v. King, 277 F.Supp. 31,38 (1967), aff'd. on other grounds, 392 U.S.309, 88 S.Ct.2128 asserted:

> It is clear that Alabama, having undertaken to cooperate with the federal government in providing an Aid to Dependent Children program and having accepted federal financial assistance for that purpose, it is not now free to bestow the benefits . . . arbitrarily . . .

While the government may classify persons for various purposes, its classification may not be based on irrational grounds. Yick Wo v. Hopkins, 118 U.S.356(1886); Gulf, Colorado and Santa Fe Ry. v. Ellis, 165 U.S.150(1897); Carrington v. Rash, 380 U.S. 89(1965); Renaldi v. Yeager, 384 U.S.305(1966). This kind of "equal protection logic" has been specifically and successfully expounded in relation to various "relief" programs in the courts. E.g., Harrell v. Tobriner, 279 F.Supp.22(D.D.C.1967) (3 judge court) (welfare residency); Thompson v. Shapiro, 270 F.Supp.331 (D.Conn.1967)(3 judge court)(residency); Green v. Department of Public Welfare, 270 F.Supp.173 (D.Del.1967)(3 judge court) (residency); Sherbert v. Verner, 374 U.S.398(1963) (unemployment insurance); Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959, cert.den., 379 U.S.938(1965) (medical care). If because of the lack of state financial resources certain welfare programs must suffer financial cutbacks the order of priorities selected by the State of Florida to accomplish this end - - favoring the aged over the young - - is nothing less than outrageous. Moreover the decision to favor the needs of the old and feeble over those of children is a discrimination quite obviously unrelated to the needs of either group.

> The state may not say that all white men shall be subjected to the payment of the attorney's fees or parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without any such basis. Gulf, C. & S.F. Ry. v. Ellis, 17 S.Ct. 225(1897). [Emphasis supplied]

This has always been the law of equal protection. Age may be a constitutionally relevant consideration in a legislative designation of competency to contract, see ibid., or sufficient maturity to vote, c.f., Lassiter v. Northampton Cty. Board of Elections, 79 S.Ct.985,990(1959), but it can make no rational sense in a definition of "need".

The further categorization effected by the Florida Department of Public Welfare in singling out, for purposes of the reduction, needy children from the needy blind, disabled, aged, must similarly fall as repugnant to the equal protection clause. Need is the controlling criterion, and the need of the blind, disabled and aged is not materially different from the need of dependent children.

There is no other relevant statutory purpose which would justify imposition of percentage reduction upon AFDC children. The conservation of funds cannot serve as a justification for these discriminations. Such an argument cannot be considered relevant. See, Green v. Department of Public Welfare, supra; Smith v. Reynolds, 277 F.Supp.65(E.D.Pa.1967) (3 judge court).

For the reasons stated plaintiffs believe the Florida scheme of percentage reduction denies them the equal protection of laws to which they are entitled under the Fourteenth Amendment. This isolation and penalization serves no legitimate State purpose.

## IV

## THE STATE ADMINISTRATIVE ORDER REDUCING ALL AFDC RECIPIENTS' BENEFITS FROM 65% OF NEED TO 57% OF NEED IS A CLEAR VIOLATION OF THE SOCIAL SECURITY ACT, TITLE 42 U.S.C. §602(a)(23).

### A. The Violation of Federal Mandate.

The essence of complainants' claim under the Social Security Act, is that §213(b) of the Social Security Amendments of 1967, P.L.90-248, Title 42 U.S.C.§602(a)(23) prohibits Florida from lowering AFDC grants prior to July 1, 1969, at which time the State must raise the grants to take into account a cost of living increase.

The statute requires that each state plan:

> provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

Under King v. Smith, 392 U.S.309, 88 S.Ct.2128,2141(1968), a State regulation is invalid if inconsistent with the Social

Security Act by dint of breaching "its Federally imposed obligations" under the State plan requirements.

The spirit of §602(a)(23) as well as the legislative history which gave rise to the amendment clearly dictates a prohibition on the states from cutting the level of AFDC grants prior to July 1, 1969.

It is well to first focus on the opening words of §602(a)(23) - - that the state must adjust the AFDC grant scheme "by July 1, 1969". The statute sets July 1, 1969, as the outside deadline for state compliance; it contemplates prior increases by the State in anticipation of that deadline.

What is the base level from which these increases are to be made? Section 602(a)(23) speaks of "changes in living costs since such amounts [used to determine needs- were established." Since the effective date of that act is January 2, 1968, and since the statute both allows and suggests compliance before July 1, 1969, the base level must logically be the last change in assistance budgeting prior to January 2, 1968.]

The final question then becomes: Can the State lower its AFDC grants between January 2, 1968 and July 1, 1969, although that reduction must be discarded when the State under §602(a)(23)'s compulsion raises AFDC grants above pre-1967 levels? Statement of the question points up the logical absurdity of a Congressional scheme that would, in Florida, have plaintiffs receive 65% of need until January, 1969; 57% of need until July 1, 1969; and then receive a "cost of living increase" which would bring the level of payments above that which was in effect in January, 1968.

The answer lies in the purpose of the dead period between January 2, 1968 and July 1, 1969. For this we must turn to the legislative history.

## B. The Legislative History of Title 42 U.S.C.§602(a)(23) [§213 of the 1967 Amendments].

House of Representative's Bill 12080 reached the Senate Finance Committee without §213. In the hearings before the Finance Committee on the 1967 Social Security Amendments, the Department of Health, Education and Welfare submitted a recommended series of amendments to H.R.12080. Hearings on H.R.12080, Vol.I, at 417 et seq). Section 209 of that draft first introduced the idea of the cost of living adjustment in AFDC grants, but in a form much broader than finally reported out of committee. First, the adjustment was to be made in every category of assistance; second, full need as determined in the adjusted budgets was to be met. The relevant provisions, identical among the categories, read as follows: the State must provide

> (A) effective July 1, 1969, for meeting [in conjunction with other income that is not disregarded, or set aside for future needs, under the plan and other resources] all the need, as determined in accordance with standards applicable under the plan for determining need, of individuals eligible to receive aid to families with dependent children [and such standards shall be no lower than the standards for determining need in effect on January 1, 1967], and
> (B) effective July 1, 1968, for an annual review of such standards and [to the extent prescribed by the Secretary] for up-dating such standards to take into account changes in living costs.
> Hearings, Vol.I, at 634-37 [Emphasis Supplied]

It will be noted that the date for updating the assistance standards to correspond to change in living costs is July 1, 1968, but that the implementation of the adjustment is left to the discretion of the Secretary of HEW. The date for meeting full need, however, is July 1, 1969. Apparently, the differentation rests on the necessity of State legislatures meeting and making additional appropriations, as will be seen more fully later.

The HEW suggestions emerged from the Finance Committee as §213(b), which was identical to Title 42 U.S.C.§602(a)(23), except that it provided for annual review and updating in years subsequent to July 1, 1969. Senate Report No.744, 90th Cong., 1st Sess.(Nov.14, 1967) at 293, 1967 U.S.Code & Cong. 1st Sess. (Dec.11, 1967), 113 Cong.Rec. at H.16701; 1967 U.S. Code & Cong. News 5501, 5531.

There was little mention of §213(b) on the floor of the Senate, and none in the House on H.R.12080 as reported out of Conference. The provision was never discussed in terms in the Senate, but only as a point of reference for two attempted but defeated additions to §213(b); (i) Senator Mansfield's presentation of Senator McGovern's proposal placed a $4 income exception on AFDC budgets, 113 Cong.Rec., 90th Cong., 1st Sess. (Nov.21, 1967), at S.1693; (ii) Senator Robert Kennedy's attempted amendment, Id.

However, an explanation is found for the year and one-half between passage and the July 1, 1969, deadline - - not in the Senate discussion on §213, but in the explanation of other provisions of the act taking mandatory effect on July 1, 1969. Thus, Senator Harris, discussing an amendment to make the then permissive unemployed father program in AFDC a mandatory program stated:

> The amendment provides an effective date of July 1, 1969, but I wish to make it clear that it is the intent of myself and the cosponsors of the amendment, who are listed in the amendment, that it should become effective as rapidly as possible, and that this legislative intent is to be governing upon both the Secretary of Health, Education and Welfare and the States.
> The only reason why the delayed effective date is necessary is to give States an opportunity to change their State plans without taking away from them in the meantime the Federal matching funds for aid to families with dependent children, particularly States in which the legislature does not meet every year. They, especially, will need the

> additional time in order to change their State plans so as to be in compliance with the amendment. 113 Cong.Rec., 90th Cong., 1st Sess. (Nov. 20, 1967), at S. 16817. [Emphasis supplied].

See also, Senator Harris' remarks on the effective date of the para-professional social worker provisions, 113 Cong.Rec., 90th Cong., 1st Sess. (Nov.20, 1967), at S.17017 ("I wish to point out that the date was changed only because some legislatures will have to meet in 1968 in order to change their basic law under the State welfare systems plan.")

What clearly emerges from the legislative history, then, is that the period between January 2, 1968 and July 1, 1969, was merely to give the States time to make the necessary studies of cost-of-living changes and legislate pursuant thereto. Therefore, the lack of federal compulsion to raise the grants until July 1, 1969, can imply no lack of compulsion to not lower the grants until that date. Indeed, §602(a)(23) provides an affirmative compulsion on Florida to actively work towards the July 1, 1969 increases, and to not lower the grants in the process.

## CONCLUSION

As the verified Complaint eloquently shows, the plaintiffs and all those similarly situated are presently in a desperate condition, i.e. 35% of their monthly needs are consistently unmet. This means inadequate diet, unsanitary housing and frequent evictions, ill-clothed children, and a family bathed with frustration. To increase the amount of unfulfilled need to 43% intensifies the pressures on a barely livable existence to the point that hope for survival in a manner which society could morally endorse becomes negligible. How can the parent who can only feed his children one-half of what they need; who can only provide one-half the necessary shelter for the family; who must choose whether to give half the children the necessary clothes and books and supplies for school or to give all the children half what they need - - how can the welfare parent in such a plight feel anything more than half a citizen?

For the reasons aforesaid and because plaintiffs will suffer immediate and truly irreparable injury when the reduction is imposed, this Court should convene a three judge court; enter a temporary restraining order [as was granted in the State of Louisiana, Lampton v. Bonin, Civil Action No.68-2092 §E, Nov. 14, 1968 by Judge Fred J. Cassidy, E.C.La. - - See attached copy]; then, upon interim hearing, grant a preliminary injunction; and, upon final arguments before the entire panel, grant a permanent injunction which would enjoin the implication of the reduction of AFDC grants from 65% of need to 57% of need.

Respectfully submitted,

ALFRED FEINBERG, ESQUIRE
ELIZABETH J. duFRESNE, ESQUIRE
HOWARD W. DIXON, ESQUIRE
LEGAL SERVICES PROGRAM, INC.
395 Northwest First Street
Miami, Florida 33128
Telephone: 379-0822

Attorneys for Plaintiffs

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U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
DEPUTY CLERK

# UNITED STATES DISTRICT COURT
# FOR THE EASTERN DISTRICT OF LOUISIANA
## NEW ORLEANS DIVISION

SHIRLEY LAMPTON and LUETHEL WILLIAMS, individually and on behalf of their minor children, and on behalf of all other persons similarly situated,
Plaintiffs

CIVIL ACTION

No. 68-2092

SECTION E

Versus

GARLAND L. BONIN, individually, and in his capacity as Commissioner of Public Welfare of the Louisiana State Board of Public Welfare;

CAMILLE ADAMS, individually, and in his capacity as Chairman of the Louisiana State Board of Public Welfare;

JOHN J. McKEITHEN, individually, and in his capacity as Governor and Ex-Officio member of the Louisiana Board of Public Welfare;

LAWRENCE MOREL, HOWARD GRUENBERG, J. GRADY MADDEN, MARY LOU WINTERS, JOSEPH D. HAIR, JR., JOHN D. SITTIG, and MATT MILAM, JR., individually, and in their capacities as members of the Louisiana State Board of Public Welfare;

and

DORIS CULVER, individually and as Director of the Orleans Parish Department of Public Welfare,
Defendants

## COMPLAINT

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POLICY AND LAW
File: Advocacy
k. Cross-

DIVISION

CIVIL ACTION

69 092

## COMPLAINT

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § § 1331, 1343 (3), 1343 (4), 2201, 2202, 2281 and 2284. The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs. This is a suit authorized by 42 U.S.C. § § 1983 and 1988 to redress deprivation under color of law of rights, privileges and immunities secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 601, et. seq.

2. The plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated pursuant to Rule 23 (a), 23 (b) (2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of all persons receiving Aid to Dependent Children (ADC) grants from the Louisiana Department of Public Welfare in the Parish of Orleans and in the State of Louisiana. The members of the class are so numerous as to make joinder of all members before this court impossible and impracticable. Common relief is sought against defendants' actions directed at the class as a whole. The interest of the class will be adequately represented by the named plaintiffs.

3. This is a proceeding for a declaratory judgment, temporary restraining order, preliminary and permanent injunction to determine whether the statewide order of the Commissioner of Public Welfare, contained in Memorandum No. 68-169, dated October 15, 1968, reducing ADC recipient grants to only 90% of budgeted need, is arbitrary and capricious in singling out ADC recipients from among other categories of welfare recipients for purposes of the reduction in contravention of the Equal Protection Clause of the Fourteenth Amendment and is contrary to the provisions of the Social Security Act 42 U.S.C. § 601, et. seq. and particularly 42 U.S.C. § 602 (a) (23).

4. This suit requires the convening of a three judge court in accordance with 28 U.S.C § 2281 and 2284, because plaintiffs seek to enjoin the enforcement, operation and execution of a state statute, and of an order of statewide effect made by a state administrative board pursuant to state statute on the grounds of the unconstitutionality of such state statute and administrative order.

5. The temporary restraining order, preliminary and permanent injunctions are sought to enjoin the defendants, hereinafter named, their agents, servants, deputies, employees, attorneys, successors in office, and all persons in active concert and participation with them from reducing the amount paid and payable to ADC recipients in any month subsequent to October, 1968, below that amount which was, or would have been, paid during October, 1968, to meet need, on the basis of any across-the-board, percentage reduction of ADC grants.

6. Plaintiffs are residents in the Parish of Orleans, State of Louisiana.

a. Plaintiff, Shirley Lampton, individually and on behalf of her minor children, currently receives an ADC grant for her eight (8) children. As of October, 1968, she received assistance in the amount of $163.00 per month, ($37.00) per week), the maximum.

b. Plaintiff, Luethel Williams, individually and on behalf of her minor children, currently receives an ADC grant for her nine (9) children. As of October, 1968, she received assistance in the amount of $163.00 per month, ($37.00 per week).

7. The defendants are:

a. Garland L. Bonin, individually, and as State Commissioner of Public Welfare. Defendant Bonin is the executive officer and administration officer of the State Department of Public Welfare (hereinafter "Welfare Department") with the authority to make and promulgate all rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of the public welfare laws.

b. Camille Adams, Chairman; Garland L. Bonin, Secretary; Lawrence Morel, Howard Gruenberg, J. Grady Madden, Mary Lou Winters, Joseph D. Hair, Jr., John D. Sittig, Matt Milam, Jr., members; individually, and in their official capacities on the Louisiana State Board of Public Welfare. The Board of Public Welfare is responsible for the adoption of all policies, rules and regulations for the government of the Department of Public Welfare.

c. Doris Culver, individually and as Director of the Orleans Parish Department of Public Welfare. Defendant Culver is responsible for administering all forms of public assistance under rules and regulations of the state department.

NEW ORLEANS DIVISION
CIVIL ACTION
2092

d. John J. McKeithen, individually, and in his capacity as Governor and ex-officio member ofthe Louisiana State Board of Public Welfare.

## FIRST CAUSE OF ACTION

8. Louisiana law, through Title 46 of Louisiana Revised Statutes, has established five categories of public assistance:

- a. Aid to the Needy Blind (ANB).
- b. Disability Assistance (DA) (aid to the permanently and totally disabled).
- c. Old Age Assistance (OAA).
- d. Aid to Dependent Children (ADC).
- e. General Assistance (GA).

The first four categories (ANB, DA, OAA, ADC) are supported in major part through contribution in accordance with the corresponding Federal categorical assistance titles of the Social Security Act, Title 42 U.S.C. The Federal government exacts certain restrictions on public assistance in return for this funding. GA is funded in its entirety by the State.

9. In order to provide the State funds necessary to the fiscal 1968-1969 operation of the welfare program (as well as to redirect the Social Security Act funds received into the State treasury to the welfare program), the Louisiana legislature, in its 1968 regular session, passed appropriation Act No. 9 (House Bill 500). By Schedule 9, Item 13 of said Act, the Welfare Department is prohibited from reducing OAA grants below the stated level. No similar stricture is directed at the other assistance categories. No other limitation is placed upon allocation and distribution of funds to welfare recipients of any category. A copy of said Act is attached as Exhibit "A"

10. On October 9, 1968, apparently under the apprehension that non-OAA funds would be prematurely exhausted before the end of the fiscal year because of an alleged increase in ADC caseload incident on the man-in-the-house ruling, the Welfare Department announced a ten percent (10%) reduction in all ADC grants. Louisiana parish department of welfare were notified by Memorandum No. 68-163, which is attached as Exhibit "B". Directions for implementing the ADC retrenching are contained in Memorandum No. 68-169,

dated October 15, 1968, and attached hereto as Exhibit "C". No cutback was ordered against the non-OAA categories of ANB, DA, or GA. No reduction was ordered against OAA grants.

11. By isolating and favoring Old Age Assistance in derogation of the need computed for the other public assistance categories (and in particular for the Aid to Dependent Children program) Act No. 9, Schedule 9, Item 13 of the Louisiana Legislative Acts of 1968, invidiously, arbitrarily and unreasonably discriminates against needy children in violation of the rights of claimants and the class they represent to the equal protection of the laws, and to the protection of the Federal regulations promulgated pursuant to Title 42, U.S.C. § 1302, Interim Policy Statement No. 4 (Third Policy Issuance), 33 Fed. Reg. 10230 (July 17, 1968), Paragraphs A, B (1) and (3), C (8), to have their benefit levels determined on the amount of assistance needed according to statewide public assistance standards.

12. By acting pursuant to said Act No. 9 in reducing ADC grants, and by further discriminating without legal or constitutional justification against needy children by levying the penalty upon ADC alone among non-OAA categories (including ANB, DA, GA), defendants, Louisiana State Board of Public Welfare and Department of Welfare, have denied complainants and the class they represent the equal protection and due process of law guaranteed to them in the Fourteenth Amendment, and the protection of the Federal regulations promulgated pursuant to Title 42 U.S.C. § 1302, Interim Policy Statement No. 4 (Third Policy Issuance), 33 Fed. Reg. 10230 (July 17, 1968), Paragraphs A, B (1) and (3), C (8), to have their benefit levels determined on the amount of assistance needed according to statewide public assistance standards.

## SECOND CAUSE OF ACTION

13. The premier determination for all public assistance recipients is their budgeted need a computation of the total financial need for one month (the sum of a limited set of allowed budgetary items, with pre-set assigned monetary figures for most among these). From this figure is subtracted the amount of other income to the income unit (subject to certain earned income exemptions), and this amount (up to certain arbitrarily set maximums) is the budgetary deficit.

p. 5

14. Through October, 1968, the grant of every category of public assistance recipient was equal to 100% of the budgetary deficit (subject to the varying maximums). Under Memorandum No. 68-169 (Exhibit C), the Welfare Department will grant ADC recipients only 90% of budgeted need (subject to the quondom maximums reduced now by 10%). All other public assistance categories will continue to receive 100% of the budgetary deficit.

a. Plaintiff Shirley Lampton, on behalf of herself and her eight (8) minor children, is receiving $163.00 on the basis of a budgetary deficit of $212.00 ($163.00 is the maximum--regardless of need budgeted--for a family of her size.) As of November, 1968, she will receive only $147.00 , a reduction of 10%.

b. Plaintiff Luethel Williams, on behalf of herself and her nine (9) minor children, is receiving $163.00 on the basis of a budgetary deficit of $ 263.00($ 163.00 is the maximum--regardless of need budgeted--for a family of her size.) As of November, 1968, she will receive only $ 147.00 , a reduction of 10%.

15. The Louisiana scheme of public assistance grants to meet budgeted need as of November, 1968, denies complainants and those similarly situated their Fourteenth Amendment right to equal protection of the laws by granting 100% of the budgetary deficit to those in need because of old age, blindness or disability, while limiting the grants of those in need by reason of age and dependency to only 90% of budgetary deficit, without rational or non-discriminatory justification.

## THIRD CAUSE OF ACTION

16. Title IV of the Social Security Act, Title 42 U.S.C. § 601 et. seq.,limits Louisiana's freedom in disbursing Aid to Dependent Children, in return for the approximately 75% provided by the federal government in each ADC dollar. 42 U.S.C. § 602 (a) (23), § 213 (b) of the Social Security Amendments of 1967, P.L. 90-248 (signed into law January 2, 1968) requires Louisiana to

> "provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

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17. The Congress of the United States has instructed Louisiana to increase benefits to needy families with dependent children sometime between January 2, 1967 (the date this statute was signed into law) and July 1, 1969. The cost of living has not declined since Louisiana last adjusted its budgeting methods upward.

18. The decrease in ADC benefits by 10%, both in the reduced maximums per each family size, and in the reduced grants regardless of family size, denies to complainants and the class they represent the rights, privileges and immunities secured to them by 42 U.S.C.A. 602 (a) (23) to be--at the least--at the level of benefits in use in Louisiana as of January 2, 1968, until such benefits are increased under Louisiana's federal obligation by July 1, 1969.

## GENERAL

19. Complainants Shirley Lampton and Luethel Williams are persons of meagre means, recipients of assistance from the Department of Welfare in sums insufficient to meet their daily needs, and are unable to pay costs in this action or give security for same. They therefore desire to commence and prosecute this action for temporary restraining order, preliminary and permanent injunction, and declaratory judgment, in the belief that they are entitled to redress, in forma pauperis as authorized by Title 28 U.S.C. § 1915.

20. There is no state remedy, either legal or administrative, available to plaintiffs. Their is no other remedy for plaintiffs available at law.

## PRAYER

WHEREFORE, complainants, individually and on behalf of their minor children and all others similarly situated, respectfully pray that this Court

1. Convene a three judge district court in accordance with Title 28 U.S.C. § § 2281, 2284.

2. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that Act No. 9, Section 14, Louisiana Acts, Regular Session 1968

UNITED STATES
EASTERN DISTRICT OF LOUISIANA
DEPUTY CLERK

is unconstitutional on its face and as applied in discriminating against, or compelling the Welfare Department to discriminate against, needy children in the ADC program; declaring that the 10% reduction in ADC grants, as embodied in Memoranda Nos. 68-163 and 68-169, and any other reduction which would not apply equally to all categories of public assistance, are violative of equal protection guaranteed in the Fourteenth Amendment; declaring that a scheme of public assistance in which all categories except ADC receive 100% of budgeted need (up to certain maximums) is an unconstitutional discrimination and violates the regulations of the Department of Health, Education and Welfare; and declaring that any reduction in ADC grants subsequent to January 2, 1968 and prior to July 1, 1969, violates Title 402 U.S.C.A. § 602 (a) (23).

3. Grant a temporary restraining order, preliminary and permanent injunction restraining defendants and each of them, their agents, servants, and employees, and successors, from adjusting downward from the amount which was, or would have been paid during October, 1968, the amount payable in any future month to recipients under the Louisiana Aid to Dependent Children (ADC) program, on the basis of any across-the-board, percentage reduction, 10% or otherwise, in grant amounts; and from paying any such reduced amount; and restraining the operation of Act No. 9, Sch. 9, Item 13, Louisiana Legislative Acts, Regular Session 1968, and Memoranda Nos. 68-163 and 68-169.

4. Allow complainants to file and prosecute this action in forma pauperis and grant them and all others similarly situated such further, other, additional or alternative relief as may appear to this Court to be just and appropriate.

Respectfully submitted

November 14, 1968

Richard A Buckley
Richard A. Buckley
605 Carondelet Building
New Orleans, Louisiana 70130
523-1297

Jeffrey B. Schwartz
Jeffrey B. Schwartz
Trial Attorney
605 Carondelet Building
New Orleans, Louisiana 70130

STATE OF LOUISIANA

PARISH OF ORLEANS

The undersigned Shirley Lampton and Luethel Williams, being duly sworn according to law deposes and says that they are the complainants in the foregoing complaint and that the facts set forth therein as they pertain to their case are true and correct to the best of their information, knowledge and belief.

Mrs. Shirley Lampton
Shirley Lampton

Mrs. Luethel Williams
Luethel Williams

Sworn to and subscribed
before me this 13th day
of November, 1968.

James E. Young, Jr.
NOTARY PUBLIC

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

SHIRLEY LAMPTON, et al
Plaintiffs

Vs.

GARLAND L. BONIN, et al
Defendants

CIVIL ACTION

NO.________________

## TEMPORARY RESTRAINING ORDER

Upon presentation and consideration of plaintiff's Motion for Temporary Restraining Order, and it appearing from such motion, from the verified complaint herein and the affidavits submitted in support of such motion, that irreparable damage will result to plaintiffs, their minor children, and the class they represent if this order is not granted

IT IS ORDERED that defendants and each of them, their agents, servants and employees, and successors, are hereby restrained for 10 days under authority of 28 U.S.C. §§ 1651, 2284, ~~pending hearing on the preliminary injunction~~, from adjusting downward from the amount which was, or would have been paid during October, 1968, the amount payable in any future month to recipients under the Louisiana Aid to Dependent Children (ADC) program, on the basis of any across-the-board, percentage reduction in grant amounts; and from paying any ~~such~~ reduced amount.

IT IS FURTHER ORDERED, that a copy of this Order be served immediately with the summons and complaint upon each of the defendants herein and due return made according to law.

Dated at New Orleans, Louisiana, this 14 day of October, 1968, at 6:20 o'clock P.M.

/s/ Fred J. Cassibry
UNITED STATES DISTRICT JUDGE

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POLICY AND LAW

File: Adequacy of Grant
A. Cross-Category

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE, et al., )

Plaintiff, )

vs. )

THE DEPARTMENT OF PUBLIC WELFARE OF THE)
STATE OF FLORIDA, et al.,
)
Defendants.
)

## MOTION TO DECLARE PLAINTIFFS INSOLVENT

Plaintiffs, by undersigned counsel, respectfully move this Honorable Court for the entry of an order declaring them to be insolvent and unable to proceed with the payment of fees, costs and other expenditures which would be required but for their indigency, and in support thereof, plaintiffs state that they are indigent and without financial means to make any of the aforesaid payments. Insolvency affidavits in support of this motion are attached hereto and to the Complaint filed herein as Exhibits E and F.

Respectfully submitted,

ALFRED FEINBERG, ESQUIRE
MRS. ELIZABETH J.duFRESNE
HOWARD W. DIXON, ESQUIRE
LEGAL SERVICES PROGRAM, INC.
395 Northwest First Street
Miami, Florida 33128
Telephone: 379-0822

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE and NELL SIMPSON, individually and on behalf of their minor children and all other parents, relatives or minor children similarly situated,

Plaintiffs,

vs.

THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, EARL P. SCHOENBERGER, Board Chairman of the Department of Public Welfare of the State of Florida, and their employees, agents, and successors in office,

Defendants.

## AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

I, GLORIA HODGE, being first duly sworn, depose and say that I am one of the named plaintiffs in the above entitled case; that in support of my Motion to proceed in this cause without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present are fully set forth in the Complaint filed herein.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay the costs of prosecuting this case are true.

(1) Are you presently employed?

(a) No.

(2) Have you received within the past 12 months any income from a business, profession or other form of self employ-

EXHIBIT 1

ment, or in the form of rent payments, interest, dividends or other source?

(a) Yes. I receive approximately $103 per month in support payments from my former husband together with $70 per month as a welfare grant from the Florida Department of Public Welfare. My total income is thus $173 per month.

(3) Do you own any cash or checking or saving accounts?

(a) No.

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

(a) No.

(5) List the persons who are dependent upon you for support and state your relationship to those persons.

(a) My children: Ervina - 15 years, Annette - 10 years, and Kathy - 6 years, are persons who are dependent upon me for support.

(6) I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Gloria Hodge (SEAL)
GLORIA HODGE, Affiant

SWORN TO AND SUBSCRIBED before me this 24 day of December, 1968.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My commission expires:

NOTARY PUBLIC, STATE of FLORIDA at LARGE
IRES APR. 9, 1972
BONDED THROUGH FRED W. DIESTELHORST

EXHIBIT- 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE and NELL SIMPSON, individually and on behalf of their minor children and all other parents, relatives or minor children similarly situated,

Plaintiffs,

vs.

THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, EARL P. SCHOENBERGER, Board Chairman of the Department of Public Welfare of the State of Florida, and their employees, agents and successors in office,

Defendants.

## AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

I, NELL SIMPSON, being first duly sworn, depose and say that I am one of the named plaintiffs in the above entitled case; that in support of my Motion to proceed in this cause without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present are fully set forth in the Complaint filed herein.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay the costs of prosecuting this case are true.

(1) Are you presently employed?

(a) I am presently employed at the Miami Laundry, 28 Northeast 3rd Street, Miami, Florida. My net monthly income is $202.34.

(2) Have you received within the past 12 months any

income from a business, profession or other form of self employment, or in the form of rent payments, interest, dividends, or other source?

(a) I receive $43 per month from the Florida Department of Public Welfare.

(3) Do you own any cash or checking or saving accounts?

(a) No.

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

(a) No.

(5) List the persons who are dependent upon you for support and state your relationship to those persons.

(a) My five minor children: Milton - 14 years, Clarence - 13 years, Arabella - 11 years, Charles - 10 years, and Gregory - 8 years, are all dependent upon me for support.

(6) I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Nell Simpson (SEAL)
NELL SIMPSON, Affiant

SWORN TO AND SUBSCRIBED before me this 24 day of December, 1968.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
My commission expires: NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES APR. 9, 1972
BONDED THROUGH FRED W. DIESTELHORST

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE and NELL SIMPSON, )
individually and on behalf of
their minor children and all
other parents, relatives or )
minor children similarly
situated,
)
Plaintiffs,

vs. )

THE DEPARTMENT OF PUBLIC
WELFARE OF THE STATE OF )
FLORIDA, EARL P. SCHOENBERGER,
Board Chairman of the Department
of Public Welfare of the State )
of Florida, and their employees,
agents and successors in office,
)
Defendants.

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## AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

I, NELL SIMPSON, being first duly sworn, depose and say that I am one of the named plaintiffs in the above entitled case; that in support of my Motion to proceed in this cause without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present are fully set forth in the Complaint filed herein.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay the costs of prosecuting this case are true.

(1) Are you presently employed?

(a) I am presently employed at the Miami Laundry, 28 Northeast 3rd Street, Miami, Florida. My net monthly income is $202.34.

(2) Have you received within the past 12 months any

income from a business, profession or other form of self employment, or in the form of rent payments, interest, dividends, or other source?

(a) I receive $43 per month from the Florida Department of Public Welfare.

(3) Do you own any cash or checking or saving accounts?

(a) No.

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

(a) No.

(5) List the persons who are dependent upon you for support and state your relationship to those persons.

(a) My five minor children: Milton - 14 years, Clarence - 13 years, Arabella - 11 years, Charles - 10 years, and Gregory - 8 years, are all dependent upon me for support.

(6) I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Nell Simpson (SEAL)
NELL SIMPSON, Affiant

SWORN TO AND SUBSCRIBED before me this 24 day of December, 1968.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My commission expires: NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES APR. 9, 1972
BONDED THROUGH FRED W. DIESTELHORST

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE and NELL SIMPSON, individually and on behalf of their minor children and all other parents, relatives or minor children similarly situated,

Plaintiffs,

vs.

THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, EARL P. SCHOENBERGER, Board Chairman of the Department of Public Welfare of the State of Florida, and their employees, agents, and successors in office,

Defendants.

## AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

I, GLORIA HODGE, being first duly sworn, depose and say that I am one of the named plaintiffs in the above entitled case; that in support of my Motion to proceed in this cause without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present are fully set forth in the Complaint filed herein.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay the costs of prosecuting this case are true.

(1) Are you presently employed?

(a) No.

(2) Have you received within the past 12 months any income from a business, profession or other form of self employ-

EXHIBIT F 1

ment, or in the form of rent payments, interest, dividends or other source?

(a) Yes. I receive approximately $103 per month in support payments from my former husband together with $70 per month as a welfare grant from the Florida Department of Public Welfare. My total income is thus $173 per month.

(3) Do you own any cash or checking or saving accounts?

(a) No.

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

(a) No.

(5) List the persons who are dependent upon you for support and state your relationship to those persons.

(a) My children: Ervina - 15 years, Annette - 10 years, and Kathy - 6 years, are persons who are dependent upon me for support.

(6) I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Gloria Hodge (SEAL)
GLORIA HODGE, Affiant

SWORN TO AND SUBSCRIBED before me this 24 day of December, 1968.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My commission expires: NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES APR. 9, 1972
BONDED THROUGH FRED W. DIESTELHORST

EXHIBIT F2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE and NELL SIMPSON, )
individually and on behalf of
their minor children and all )
other parents, relatives or
minor children similarly )
situated,
)
Plaintiffs,
)
vs.
)

THE DEPARTMENT OF PUBLIC WELFARE
OF THE STATE OF FLORIDA, EARL P. )
SCHOENBERGER, Board Chairman of the
Department of Public Welfare of the)
State of Florida, and EMMETT S.
ROBERTS, Director of the Department)
of Public Welfare of the State of
Florida, and their successors in )
office,
)
Defendants.
)

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(1) The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C.§§1331, 1343(4), (4), 2281 and 2284. The amount in controversy is in excess of $10,000. This is a suit for injunctive relief authorized by Title 42 U.S.C.§§1983 and 2000(d) to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, rights, privileges and immunities secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Supremacy Clause of Article VI, Clause 2, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and the Federal Social Security Act, Title 42 U.S.C. §§601-609. This is also a suit for a declaratory judgment pursuant to Title 28 U.S.C.§§2201 and 2202 of rights established by the aforementioned constitutional and statutory provisions.

(2) This is a proper case for determination by a three

judge district court pursuant to Title 28 U.S.C. §2281, since it seeks an injunction to restrain the enforcement, operation and execution of statewide administrative regulations set forth in Operations Letter No. 1680 dated November 14, 1968 from Francis Davis, Director of the Division of Children's Services of the Department of Public Welfare to all District Directors of the State Department of Public Welfare (a copy of which is attached hereto as Exhibit $A_1$-$A_8$) by restraining certain officials of the State of Florida from the enforcement and execution of such regulations on the grounds that they are contrary to and violative of the Federal Constitution and Statutes aforementioned.

(3) This is a proceeding for a temporary restraining order, a preliminary and permanent injunction and declaratory judgment to declare the across-the-board 12% reduction of welfare grants to families with dependent children as set forth in Exhibit A, unconstitutional and violative of Title 42 U.S.C. §§601 et seq. and more particularly Title 42 U.S.C. §602(a)(23) and to enjoin the defendants from enforcing same.

(4) This is a class action authorized by Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all persons similarly situated who are needy parents of dependent children and their needy dependent children who are eligible for Aid to Families with Dependent Children (hereinafter referred to as AFDC). The class is so numerous as to make joinder of all members of the class impracticable. There are questions of law and fact common to the class; the claims of the plaintiffs are typical of the claims of the members of the class, and the plaintiffs will protect and represent the interests of the class.

(5) Plaintiffs are also members of a sub-class within

the class described in paragraph (4) composed of black persons who have been discriminated against with regard to the determination of their benefits on the basis of race. The members of the sub-class are so numerous as to make joinder impracticable. There are common questions of law and fact; plaintiffs' claims are typical of the claims of the sub-class. Plaintiffs will protect and represent the interests of the sub-class.

(6) Plaintiff NELL SIMPSON is an adult Negro citizen of the State of Florida and a resident of the City of Miami. She is the mother and sole support of five minor children: Milton - 14 years; Clarence - 13 years; Arabella - 11 years, Charles - 10 years; and Gregory - 8 years. Plaintiff and her children reside in an apartment maintained by her as her home. Plaintiff's net income, derived from her employment as a laundry worker, is $202.34 per month (as determined by the Department of Welfare), together with $43 per month received by her from the Department of Public Welfare under the AFDC Program. Plaintiff SIMPSON's total income is thus $245.34 per month.

(7) Plaintiff HODGE is an adult Negro citizen of the State of Florida and a resident of the City of Miami. She is the mother and sole support of three minor children: Ervina - 15 years; Annette - 10 years; and Kathy - 6 years. Plaintiff HODGE resides with her minor children in an apartment maintained by her as her home. Plaintiff HODGE's total income is derived from support payments from her former husband in the amount of $103 per month, together with $70 per month received by her as a welfare grant under the AFDC Program. Plaintiff HODGE's total income is thus $173 per month.

(8) Defendant EMMETT S. ROBERTS is the Director of the Department of Public Welfare of the State of Florida and is

charged by Florida Statutes §409.11 with the administration of the rules and regulations governing all of the state categorical assistance programs; Aid to the Aged, Aid to the Blind, Aid to the Disabled (cumulatively hereinafter referred to as AABD), and Aid to Families with Dependent Children (AFDC).

(9) Defendant EARL P. SCHOENBERGER is Board Chairman of the Department of Public Welfare and a member of the Board of Public Welfare of the State of Florida, and is charged by Florida Statutes §409.02 with the responsibility of promulgating, conducting, supervising and administrating regulations governing the State Department of Public Welfare or causing to be administered, within the State, all social welfare and relief work.

(10) At all times pertinent hereto, the State of Florida in order to receive Federal funds for the aforementioned categorical public assistance programs, was required by the provisions of Title 42 U.S.C. §§601-609 to have formulated and submitted to the Secretary of the United States Department of Health, Education and Welfare for his approval a "State plan" for the categorical assistance programs consistent with the Constitution of the United States and the provisions of the Federal Social Security Act. (Title 42 U.S.C. §§601 et seq.)

(11) In fulfillment of its obligations under Federal legislation, the State of Florida has drawn up a plan for the provision of assistance to eligible needy persons. Pursuant to this plan, the State Department of Public Welfare has established standard allowances for basic requirements which when established were considered the minimum allowance necessary to provide recipients with a standard of living compatible with minimum health and decency. In the AFDC Program these standards include the specific items considered essential and the amount established

for their purchase as shown in Exhibit B attached hereto. The basic requirements include amounts for (1) food, (2) clothing, (3) personal incidentals, and (4) household needs. In the AABD Programs, in addition, they include an amount for laundry and transportation. (See Exhibit B.)

(12) The welfare recipient's budgetary need (for both AABD and AFDC) is determined by the sum of the standard allowances for basic requirements taken together with the actual shelter expenses of the recipient (not to exceed the maximum amount established by the formula set forth at the bottom of Exhibit B). The sum total of the welfare recipient's needs is then balanced against the income received by the recipient from sources other than the welfare grant. The difference between the total budgeted need and this income is then considered the budgetary deficit (hereinafter referred to as the unmet budgetary need) on which the amount of payment shall be based -- up to the maximum grant for the particular category of assistance.

(13) When compared to the $3,335 which the Department of Health, Education and Welfare deems a minimum budget compatible with health and decency for a family of four, the $2,688 for AFDC and $3,012 for AABD deemed sufficient by the Department of Welfare of the State of Florida to meet 100% of the needs of a family of four casts substantial doubt upon the credibility of the Department of Welfare's computations. For the purposes of this case, however, plaintiffs do not question the validity of this determination of need.

(14) The maximum grant of assistance allowed to each individual receiving an AABD grant is $75 per month. This is to say that qualified applicants for the AABD Program, whose unmet budgetary need, as calculated by the above described method, is

$75 per month or less, receive 100% of their need. AABD recipients whose unmet budgetary need is in excess of $75 per month receive a maximum of $75 per month. (See Exhibit $C_2$, paragraph 3b.)

(15) The maximum grant presently allowed to each family receiving an AFDC grant is 65% of the unmet budgetary need regardless of the size of the unmet budgetary need as computed by the above described method. (See Exhibit $C_1$). These regulations are applied to the named plaintiffs in the following manner:

A. According to the Department of Welfare, plaintiff SIMPSON and her five children have an unmet budgetary need of $66.16. Mrs. Simpson's AFDC grant equals 65% of her unmet budgetary need -- or $43. A welfare recipient under any of the AABD Programs with a comparable unmet budgetary need would receive $66.16 since the need is less than the maximum of $75.

B. According to the Department of Welfare, plaintiff HODGE and her three children have an unmet budgetary need of $107 per month. Mrs. Hodge's welfare grant is 65% of $107 -- or $70 per month. A welfare recipient under any of the AABD Programs with the same unmet budgetary need would receive $75, the maximum grant allowed to each recipient under the AABD Programs.

(16) Despite the patent disparity and arbitrary application of different maximums to the various categorical assistance programs, plaintiffs question neither the method of determining maximum grant for any of the programs nor the validity of the existing disparity between the maximum grants allowed to each assistance program.

(17) On November 14, 1968, apparently because of the insufficiency of funds available for the remainder of the fiscal year, the State Department of Public Welfare announced a reduction

from 65% of need to 57% in all AFDC grants effective January 1, 1969. (See Exhibit $A_1$) No cut back was announced or ordered for any of the AABD Programs -- despite the fact that the cumulative expenditure for the non AFDC programs (AABD) represents fully two-thirds of the total state welfare budget. Thus, effective January 1, 1969, plaintiff SIMPSON's welfare grant will be reduced to $38 and plaintiff HODGE's welfare grant will be reduced to $61. (See, Exhibits $A_3$ and $A_4$ respectively)

## FIRST CAUSE OF ACTION

(18) By threatening to reduce only AFDC grants, the Department of Public Welfare has arbitrarily isolated and invidiously discriminated against AFDC recipients in favor of AABD recipients without legal or constitutional justification. The effect of the reduction is to impose penalties against needy children alone among all welfare recipients. The actions and the threatened actions of the Department of Public Welfare and the defendants herein will deny to plaintiffs and all others similarly situated the equal protection and due process of law guaranteed to them by the Fourteenth Amendment to the Constitution of the United States as also the protection of the federal regulations promulgated pursuant to Title 42 U.S.C.§§1302, to-wit: 33 Fed. Reg. 10230, 10231 (July 17, 1968), paragraphs A,B(1),(3), and C(8), requiring that:

> Payments be based on the determination of the amount of assistance needed and that, if full individual payments are precluded by maximums or insufficient funds adjustments will be made by methods applied uniformly statewide. (See, Exhibit D)

## SECOND CAUSE OF ACTION

(19) Of those persons currently receiving AFDC, an overwhelming proportion are members of the black race. Of those

persons who are recipients of the AABD Programs, only a relatively small proportion are members of the black race. Despite this fact, which is well known to defendants herein, they, and each of them, threaten to reduce AFDC benefits by 12% without a corresponding adjustment of benefits under the AABD Programs.

(20) By arbitrarily limiting the amount payable to AFDC recipients who are members of the class and sub-class defined herein to 57% while maintaining a $75 maximum to persons similarly situated in other welfare categories, the State has denied or threatens to deny to plaintiffs equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States. The imposition of the arbitrary reduction on aid payable to AFDC recipients is an invidious distinction between AFDC recipients and other applicants for public assistance which bears no reasonable relationship to the purposes of the assistance programs; namely the furnishing of assistance to the needy, strengthening of family life and the encouragement of personal independence (Title 42 U.S.C. §601).

(21) The racial discrimination alleged above pertains to racial discrimination in the administration of federally funded programs under the Social Security Act, Title 42 U.S.C. §§601 et seq. and is proscribed by Title VI of the Civil Rights Act of 1964, Title 42 U.S.C. §2000(d).

## THIRD CAUSE OF ACTION

(22) Title VI of the Social Security Act, Title 42 U.S.C. §§601 et seq. and more particularly 42 U.S.C. §602(a)(23) of the Social Security Amendments, 1967 PL 90-248 (signed into law January 2, 1968) requires Florida to:

> Provide that by July 1, 1969 the amounts used by the state to determine the need of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted. [See also, 33 Fed. Reg. B(2)].

(23) The Congress of the United States has instructed Florida to increase benefits to needy families with dependent children sometime between January 2, 1968 (the date the Statute was signed into law) and July 1, 1969. The cost of living has increased substantially since Florida last established its budgetary allowances.

(24) The decrease in AFDC benefits by over 12% denies to plaintiffs and the class they represent the rights, privileges and immunities secured to them by Title 42 U.S.C. §602(a)(23) to have their grants, at the very least, maintained at the level existing as of January 2, 1968 until such time as they are increased under Florida's federal obligation effective July 1, 1969.

(25) Defendants' enforcement of the arbitrary and capricious reduction of maximum allowance to AFDC recipients without a corresponding adjustment in AABD benefits will cause plaintiffs extreme hardship, suffering and anxiety including inadequate food, clothing and shelter. Plaintiffs will suffer severe and irreparable injury to their health and well being as a result of the implementation of the discriminatory reduction in welfare benefits unless such provisions are declared unconstitutional and illegal and their enforcement enjoined by this Court.

(26) No adequate administrative remedy or adequate remedy at law is available to plaintiffs.

WHEREFORE plaintiffs respectfully pray on behalf of themselves and all others similarly situated:

(1) That a three judge district court be convened to determine this controversy pursuant to Title 28 U.S.C. §§2281 and 2284.

(2) That this Court enter a declaratory judgment pursuant to Title 28 U.S.C. §2201 and Rule 57 of the Federal Rules of Civil Procedure declaring the 12% reduction to be:

(a) Violative of the Equal Protection Clause to the Fourteenth Amendment to the Constitution of the United States and unconstitutional on its face and as applied in discriminating against AFDC recipients and needy children under the AFDC Program.

(b) Violative of and contrary to Title 42 U.S.C. §§601 et seq. and 33 Fed. Reg. 10230, A,B(1),(3), and C(8).

(c) Racial discrimination under color of State regulation contrary to Title VI of the Civil Rights Act of 1964, Title 42 U.S.C. §2000(d) in that it is an arbitrary discrimination imposed upon AFDC recipients overwhelmingly composed of members of the black race.

(3) That this Court enter a temporary restraining order and a preliminary injunction pending the final determination of this matter and after final hearing, a permanent injunction prohibiting, restraining and enjoining defendants from enforcing, applying or implementing the aforesaid 12% reduction which on its face and as applied discriminates in favor of AABD recipients and against AFDC recipients.

(4) That this Court allow plaintiffs to file and prosecute this action in forma pauperis (See Affidavits attached as Exhibits E and F ) and grant them and all others similarly

situated such further, other and additional or alternative relief as may appear to this Court to be just and proper.

Respectfully submitted,

ALFRED FEINBERG, ESQUIRE
MRS. ELIZABETH J. duFRESNE
HOWARD W. DIXON, ESQUIRE
Legal Services Program, Inc.
395 Northwest First Street
Miami, Florida 33128
Tel: 379-0822

Attorneysfor Plaintiffs

## VERIFICATION

STATE OF FLORIDA ) SS
COUNTY OF DADE )

PERSONALLY APPEARED before me the undersigned authority, and after being duly sworn deposes and says that she is one of the named plaintiffs in the above and foregoing Complaint and that the facts alleged therein are true to the best of her knowledge and belief.

Gloria Hodge
GLORIA HODGE, Plaintiff

SWORN TO AND SUBSCRIBED before me this 24 day of December, 1968.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA at LARGE
MY COMMISSION EXPIRES APR. 9, 1972
BONDED THROUGH FRED W. DIESTELHORST

## VERIFICATION

STATE OF FLORIDA ) SS
COUNTY OF DADE )

PERSONALLY APPEARED before me the undersigned authority, and after being duly sworn deposes and says that she is one of the named plaintiffs in the above and foregoing Complaint and that the facts alleged therein are true to the best of her knowledge and belief.

Nell Simpson
NELL SIMPSON, Plaintiff

SWORN AND SUBSCRIBED before me this 24 day of December, 1968.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My commission expires:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO. 68-1330-Civ-TC

NELL SIMPSON and GLORIA HODGE, individually and on behalf of their minor children and all other parents, relatives or minor children similarly situated,

Plaintiffs,

vs.

THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, EARL P. SCHOENBERGER, Board Chairman of the Department of Public Welfare of the State of Florida, and EMMETT S. ROBERTS, Director of the Department of Public Welfare of the State of Florida, and their successors in office,

Defendants.

## FIRST AMENDED COMPLAINT

1. The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C.§§2281, 2284 and 1343(3). This is a suit for injunctive relief authorized by Title 42, U.S.C. §§1983 and 2000(d) to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of those rights, privileges and immunities secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Supremacy Clause of Article VI, Clause 2, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and the Federal Social Security Act, 42 U.S.C. §601-609. This is also a suit for a declaratory judgment pursuant to Title 28, U.S.C. §2201 of rights established by the aforementioned constitutional and statutory provisions.

2. This is a proper case for the determination by a three-judge district court pursuant to 28 U.S.C. §2281, since it seeks an injunction to restrain the enforcement, operation and execution of statewide regulations set forth in a May 7, 1968 transmittal from EMMETT S. ROBERTS, a defendant herein, to Division and District Directors of the State Department of Public Welfare (a copy of which is attached hereto as Exhibit A) by restraining certain officials of the State of Florida from the enforcement and execution of such statewide administrative regulations on the grounds that they are unconstitutional and violative of the Federal Constitution and Statutes aforementioned.

3. This is a proceeding for a preliminary and permanent injunction to enjoin the defendants from continuing to enforce or otherwise apply the regulations as set forth in Exhibit A herein which regulations create a discriminatory, disparate and unequal treatment between welfare recipients in different welfare programs who have equal needs and suffer equal deprivations. This is also a proceeding to declare the policy set forth in Exhibit A unconstitutional and in violation of the Federal Constitution and Statutes set forth in paragraph (1) above.

4. This is a proceeding for preliminary and permanent mandatory injunction to require the defendants to furnish public assistance to plaintiffs and all others similarly situated in accordance with their actual financial needs as computed under the laws and regulations of the State of Florida.

5. This is a class action authorized by Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all persons similarly situated who are needy parents of dependent children and their needy dependent children eligible for Aid to Families with Dependent Children

and who are deemed by the Florida State Department of Welfare to have an unmet budgetary need of $131 per month or less. (See paragraph 16 for explanation) The class is so numerous as to make joinder of all members of the class impracticable. There are questions of law or fact common to the class; the claims of the plaintiffs are typical of the claims of the members of the class, and the plaintiffs will protect and represent the interest of the class.

6. Plaintiffs are also members of a sub-class within the class described in paragraph (5) composed of black persons who have been discriminated against with regard to the determination of their benefits on the basis of race. The members of the sub-class are so numerous as to make joinder impracticable. There are common questions of law and fact, and plaintiffs claims are typical of the claims of the sub-class.

7. Plaintiff NELL SIMPSON is an adult Negro citizen of the State of Florida and a resident of the City of Miami. She is the mother and sole support of five minor children; Milton, age 14; Clarence,age 13; Arabella, age 11; Charles, age 10; and Gregory, age 8. Plaintiff and her children reside in an apartment maintained by her as her home. Plaintiff's net income, derived from her employment as a laundry worker, is $202.34 per month (as determined by the Department of Welfare), and $38.00 received by her from the Department of Welfare under the Aid to Families with Dependent Children Program (hereinafter referred to as AFDC). Plaintiff SIMPSON's total income is thus $240.34 per month.

8. Plaintiff GLORIA HODGE is an adult Negro citizen of the State of Florida, and a resident of the City of Miami. She is the mother and sole support of three minor children; Ervina, age 15; Anette, age 10; and Kathy, age 6. Plaintiff HODGE resides with her minor children in an apartment maintained by her as her home. Plaintiff HODGE's total income is derived from support payments from her former husband in the amount of

$103 per month, together with $61 per month received by her as a welfare grant under the AFDC Program. Plaintiff HODGE's total income is thus $164 per month.

9. Defendant EMMETT S. ROBERTS is the Director of the Department of Public Welfare of the State of Florida and is charged by Florida Statutes §409.11 with the administration of the rules and regulations governing all of the state categorical assistance programs; Aid to the Aged, Aid to the Blind, Aid to the Disabled (cumulatively hereinafter referred to as AABD), and Aid to Families with Dependent Children (AFDC).

10. Defendant EARL P. SCHOENBERGER is Board Chairman of the Department of Public Welfare and a member of the Board of Public Welfare of the State of Florida, and is charged by Florida Statutes §409.02 with the responsibility of promulgating, conducting, supervising and administrating regulations governing the State Department of Public Welfare or causing to be administered, within the State, all social welfare and relief work.

11. At all times pertinent hereto the State of Florida in order to receive federal funds for the aforementioned categorical public assistance programs, was required by the provisions of Title 42, U.S.C. §§601-609 to have formulated and submitted to the Secretary of the United States Department of Health, Education and Welfare for his approval a "State plan" for the categorical assistance programs consistent with the Constitution of the United States and the provisions of the Federal Social Security Act. (42 U.S.C. §§601, et seq.)

12. In fulfillment of its obligations under Federal legislation, the State of Florida has drawn up a plan for the provision of assistance to eligible needy persons. Pursuant to this plan, the State Department of Public Welfare has established

standards for the basic requirements which when established were considered essential to all people for the maintenance of a level of living compatible with health and decency. In the AFDC Program these standards include the specific items considered essential and the amount established for their purchase as shown in Exhibit B attached hereto. The basic requirements include amounts for (1) food, (2) clothing, (3) personal incidentals, and (4) household needs. In the AABD Programs, in addition, they include an amount for laundry and transportation. The allowances provided for in Exhibit B shall hereinafter be referred to as "standard allowances".

13. The welfare recipient's budgetary need (for both AABD and AFDC) is determined by the sum of the standard allowances for basic requirements taken together with the actual shelter expenses of the recipient (not to exceed the maximum amount established by the formula set forth at the bottom of Exhibit B.) The sum total of the welfare recipient's needs is then balanced against the income received by the recipient from sources other than the welfare grant. The difference between the total budgeted need and this income is then considered the budgetary deficit (hereinafter referred to as the unmet budgetary need) on which the amount of payment shall be based -- up to the maximum grant for the particular category of assistance.

14. When compared to the $3,335 which the Department of Health, Education and Welfare deems a minimum budget compatible with health and decency for a family of four, the $2,688 for AFDC and $3,012 for AABD deemed sufficient by the Department of Welfare of the State of Florida to meet 100% of the needs of a family of four casts substantial doubt upon the credibility of the Department of Welfare's computations. For the purposes of this case, however, plaintiffs do not question the validity of this determination of need.

15. The maximum grant of assistance for recipients of the AABD Program is $75 per month. This is to say that qualified applicants for the AABD Program, whose unmet budgetary need as calculated by the above described method is $75 per month or less, receive 100% of their need. AABD recipients whose unmet budgetary need is in excess of $75 per month receive a maximum of $75 per month. (See Exhibit A2,3b) The maximum grant allowed to all AFDC recipients is 57% of unmet budgetary need, regardless of the size of the unmet budgetary need as computed by the above method. (See Exhibit A, Operations Letter) The restriction in payments to AFDC recipients is sometimes referred to hereinafter as the "57% limitation". These regulations are applied to the plaintiffs in the following manner:

A. Plaintiff SIMPSON and her five children receive $38.00 a month in AFDC benefits. This is computed as follows: The standard allowance for six persons is $214.50. [$35.75 x 6 = $214.50. (See Table contained in Exhibit C for easy computation)]. This is the total payment for all expenses save and except rent. Mrs. Simpson's actual rent is $54.00 per month (less than the $75 allowed for a family of five or more persons.) (See bottom of Exhibit B) Thus, Mrs. Simpson's total need is $268.50. Mrs. Simpson's net income from her employment is $202.34, thus giving her an unmet budgetary need of $66.16. Mrs. Simpson's AFDC grant is $38.00; 57% of her unmet budgetary need. A welfare recipient under any of the AABD Programs with a comparable unmet budgetary need would have received 100% of that need, or $66.16.

B. Plaintiff HODGE and her three children receive $61 in AFDC benefits. This is computed as follows: the standard allowance for a family of four is $159. Added to this by the Department of Welfare is a special clothing allowance of $4.00. The actual rent paid by Mrs. Hodge is $35 (less than the maximum amount of $65 allowed to a family of four persons). In addition to these items, Mrs. Hodge receives a special dietary allowance of $12 per month. Thus, Mrs. Hodge's total need as determined by the Department of Welfare is $210 per month. Mrs. Hodge receives approximately $103 per month in support payments from her former husband. Mrs. Hodge's unmet budgetary need or budgetary deficiency is thus $107 per month. Mrs. Hodge's welfare grant is 57% of $107; or $61 per month. A single welfare recipient under any of the AABD Programs with the same unmet budgetary need would receive 70% of $107, or $75, the maximum grant allowed to each recipient under the AABD Programs.

16. Because of defendants' arbitrary distinction between the maximum allowable grant in AABD Programs and the maximum allowable grant in AFDC Program, all recipients of the AABD Program whose unmet budgetary need is determined to be $131 or less receive between 57% and 100% of such need. (All AABD recipients whose unmet budgetary need is $75 or less, receive 100% of unmet need; all persons with unmet need between $75 and $131 in the AABD Programs receive between 100% and 57% of such need). All AFDC recipients deemed to have an unmet budgetary need of $131 or less receive a maximum of 57% of such need. Thus, all recipients of the AFDC Program whose unmet budgetary need is $131 or less, receive lower welfare grants than recipients of the AABD Programs who are deemed by the Welfare Department to have a similar unmet budgetary need.

17. Of those persons currently receiving AFDC, an overwhelming proportion are members of the black race. Of those persons who are recipients of the AABD Program, only a relatively small proportion are members of the black race. Despite this fact, which is well known to the defendants herein, they, and each of them, continue to maintain the arbitrary distinction which exists between the maximum allowable grants in the AABD and AFDC Programs for persons who are otherwise similarly situated.

18. By arbitrarily limiting the amount payable to an AFDC recipient, who is a member of the class and sub-class defined herein to 57% of state-determined subsistence, while providing 57% to 100% to similarly situated persons in other welfare categories, the state has denied to plaintiffs the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States. Constitutional guarantees of equal protection and due process are fully applicable to the state expenditure policies in general, and to the AABD and AFDC Programs in particular. The imposition of the arbitrary 65% limitation on aid payable to AFDC recipients who are members of the class as defined herein, created an invidious distinction between AFDC recipients and other applicants for public assistance which bears no reasonable relationship to the purposes of the assistance programs; namely, the furnishing of assistance to the needy, the strengthening of family life, and the encouragement of personal independent. (42 U.S.C. §601).

19. The arbitrary discrimination against all AFDC recipients who are members of the class defined herein, resulting from the 57% limitation, is contrary to the intent of the Social Security Act, 42 U.S.C.§§601 et seq., and regulations promulgated thereunder; that recipients shall be treated equitably.

20. Limiting assistance to 57% of unmet budgetary need for AFDC applicants, while not so limiting payment to the AABD applicants, constitutes an invidious discrimination violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, because the burden of this limitation falls predominantly on persons of the black race.

21. The racial discrimination alleged above, proscribed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, pertains to racial discrimination in the administration

of federally funded programs and the Social Security Act, Title 42 U.S.C.§§601 et seq., and regulations promulgated thereunder, requiring equitable treatment of all recipients.

22. Defendants' enforcement of the arbitrary distinction between the maximum allowance permitted to AABD recipients and AFDC recipients has caused plaintiffs extreme hardship, suffering and anxiety, including inadequate food, clothing and shelter. Plaintiffs have suffered and will continue to suffer severe and irreparable injury to their health and wellbeing as a result of the discriminatory provisions aforesaid until such provisions are declared unconstitutional and illegal, and their enforcement enjoined by this Court.

23. No adequate administrative remedy or adequate remedy at law is available to plaintiffs.

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated:

1. That a three-judge district court be convened to determine this controversy, pursuant to Title 28 U.S.C.§§2281 and 2284.

2. That this Court enter a declaratory judgment pursuant to Title 28 U.S.C.§2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the 57% limitation promulgated and enforced by the defendants herein:

a. Contravenes the purpose and intent of the State Welfare categorical assistance programs as expressed in the Federal Social Security Act, Title 42 U.S.C.§§601 et seq;

b. Violates and is repugnant to the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and

c. Denied plaintiffs and the class they represent freedom from racial discrimination protected by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d in that they arbitrarily discriminate between a group primarily composed of persons of the white race.

3. That this Court enter a preliminary injunction pending the final determination of this matter and a permanent injunction prohibiting, restraining and enjoining defendants from enforcing, applying or implementing the aforesaid Maximum Grant provisions, which on their face, and as applied, discriminate in favor of AABD recipients, whose unmet budgetary need is less than $131 and against plaintiffs and members of their class.

4. That this Court enter a preliminary and permanent injunction prohibiting payments of assistance which are less than the minimum subsistence needs as established by the Florida Department of Public Welfare, and order and require the defendants to make welfare payments to plaintiffs and members of their class in accordance with minimum subsistence needs as set forth by the standard allowance determinations of the Florida Department of Public Welfare.

5. That this Court award plaintiffs their costs and disbursements incurred herein, and such further, other, and additional or alternative relief as may appear to this Court to be just and proper.

Respectfully submitted,

ALFRED FEINBERG, ESQUIRE,
MRS. ELIZABETH J. duFRESNE
HOWARD W. DIXON, ESQUIRE
LEGAL SERVICES PROGRAM, INC.
395 Northwest First Street
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Telephone: 379-0822

PAUL MICHAEL DODYK & HENRY A.FREEDMAN,
ESQS. Center on Social Welfare Policy
& Law
401 West 117 Street
New York, New York 10027
Telephone: (212)280-4112

By Elizabeth J. duFresne
ELIZABETH J.duFRESNE
Attorney for Plaintiffs

I HEREBY CERTIFY that a true and correct copy of the foregoing First Amended Complaint was served by United States Mail, this 7th day of January, 1969, upon S. STROME MAXWELL, Resident Agent, State Department of Public Welfare, State of Florida, 227 Park Street, Jacksonville, Florida, 32203.

Elizabeth J. du Fresne

ELIZABETH J.duFRESNE
Attorney for Plaintiffs

# OPERATIONS LETTER

November 14, 1968

No. 1680

| | |
|---|---|
| To: | District Directors |
| From: | Frances Davis, Director, Division of Children's Services |
| Re: | Aid to Families With Dependent Children<br>Reduction of Grants |

At its meeting on November 14, 1968, the State Board accepted the staff recommendation that grants in the program of Aid to Families with Dependent Children be reduced from 65% to 57% of unmet need. This action was necessary because of the marked increase in cases and the size of average grants. Funds available for the remainder of this fiscal year are not sufficient to allow the program to continue on the basis of 65% of unmet need.

This action becomes effective beginning with assistance payments for January 1969. The following procedures will be followed:

| | |
|---|---|
| November 22: | Special Change of Grant Notice forms will be mailed to Units. |
| November 25 and 26: | Immediately after the December payroll is completed Systems and Procedures will compute the January grants at 57%. New PA-3c's will be mailed to the Units. The Units should destroy all active AFDC PA-3c's in their files and replace them with the new PA-3c's which will show the amount of the grant effective January 1969.<br>After each weekly new case payroll processed in December, the new case approvals will be immediately recomputed for January and new PA-3c's sent to the Units. These will reflect the January grant, not the grant shown on the December new case payroll. |
| December 6: | Charts showing arithmetical computation of 57% for amounts up to $500.00 will be mailed to units. |

# OPERATIONS LETTER

December 2, 1968

Number 1682
Ref. O. L. #1645

To: District Directors

From: James E. Drake, Jr., Acting Director, Research and Statistics

Schedule for Computation of 57% Grants in AFDC

Attached is a schedule which relates the dollar amount of the budgetary deficit as determined by staff to the 57% actual payment which will be made to recipients of AFDC.

The computation of the actual payments based on 57% of the budgetary deficit is effective with the January 1969 assistance grant. Retroactive payment for assistance grants before January 1969 would still be computed at the 65% rate.

Staff will continue to submit PA-3b and 3c cards with the amount of the budgetary deficit reduced to the nearest dollar entered in the appropriate space. The amount of the assistance grant on these cards will be left blank. However, the appropriate figures on the attached schedule may be used by staff to determine the anticipated amount of the grant for purposes of completing the Notice to the Client, posting in the case record and for completing a PA-3s for a special circumstance payment as outlined in Operations Letter 1645.

The PA-3c returned by the State Office to the District will have the amount of the grant as computed in the State Office. Also, the control register which is returned to the District Office will reflect the amount of payment. The current procedure of checking this control register against the PA-2a, Notice to the Client, which is being held in the District Office for Board action is to be continued. If discrepancies are found between the amount of the control register and the Notice to the Client these figures must be reconciled before the notice is mailed. If it appears that the error is in the worker's computation, this will of course be corrected at the local level. If it appears to be an error in the State Office, Systems and Procedures should be contacted so that the error at that level may be corrected.

JED/nm

Attachment

# COMPUTATION OF AFDC GRANTS BASED ON 57 PERCENT OF BUDGETARY DEFICIT

| Budgetary Deficit | Fifty-Seven Percent | Grant |
|---|---|---|
| 1.00 | .57 | 1.00 |
| 2.00 | 1.14 | 2.00 |
| 3.00 | 1.71 | 2.00 |
| 4.00 | 2.28 | 3.00 |
| 5.00 | 2.85 | 3.00 |
| 6.00 | 3.42 | 4.00 |
| 7.00 | 3.99 | 4.00 |
| 8.00 | 4.56 | 5.00 |
| 9.00 | 5.13 | 6.00 |
| 10.00 | 5.70 | 6.00 |
| 11.00 | 6.27 | 7.00 |
| 12.00 | 6.84 | 7.00 |
| 13.00 | 7.41 | 8.00 |
| 14.00 | 7.98 | 8.00 |
| 15.00 | 8.55 | 9.00 |
| 16.00 | 9.12 | 10.00 |
| 17.00 | 9.69 | 10.00 |
| 18.00 | 10.26 | 11.00 |
| 19.00 | 10.83 | 11.00 |
| 20.00 | 11.40 | 12.00 |
| 21.00 | 11.97 | 12.00 |
| 22.00 | 12.54 | 13.00 |
| 23.00 | 13.11 | 14.00 |
| 24.00 | 13.68 | 14.00 |
| 25.00 | 14.25 | 15.00 |
| 26.00 | 14.82 | 15.00 |
| 27.00 | 15.39 | 16.00 |
| 28.00 | 15.96 | 16.00 |
| 29.00 | 16.53 | 17.00 |
| 30.00 | 17.10 | 18.00 |
| 31.00 | 17.67 | 18.00 |
| 32.00 | 18.24 | 19.00 |
| 33.00 | 18.81 | 19.00 |
| 34.00 | 19.38 | 20.00 |
| 35.00 | 19.95 | 20.00 |
| 36.00 | 20.52 | 21.00 |
| 37.00 | 21.09 | 22.00 |
| 38.00 | 21.66 | 22.00 |
| 39.00 | 22.23 | 23.00 |
| 40.00 | 22.80 | 23.00 |
| 41.00 | 23.37 | 24.00 |
| 42.00 | 23.94 | 24.00 |
| 43.00 | 24.51 | 25.00 |
| 44.00 | 25.08 | 26.00 |
| 45.00 | 25.65 | 26.00 |
| 46.00 | 26.22 | 27.00 |
| 47.00 | 26.79 | 27.00 |
| 48.00 | 27.36 | 28.00 |
| 49.00 | 27.93 | 28.00 |
| 50.00 | 28.50 | 29.00 |
| 51.00 | 29.07 | 30.00 |
| 52.00 | 29.64 | 30.00 |
| 53.00 | 30.21 | 31.00 |
| 54.00 | 30.78 | 31.00 |
| 55.00 | 31.35 | 32.00 |
| 56.00 | 31.92 | 32.00 |
| 57.00 | 32.49 | 33.00 |
| 58.00 | 33.06 | 34.00 |
| 59.00 | 33.63 | 34.00 |
| 60.00 | 34.20 | 35.00 |
| 61.00 | 34.77 | 35.00 |
| 62.00 | 35.34 | 36.00 |
| 63.00 | 35.91 | 36.00 |
| 64.00 | 36.48 | 37.00 |
| 65.00 | 37.05 | 38.00 |
| 66.00 | 37.62 | 38.00 |
| 67.00 | 38.19 | 39.00 |
| 68.00 | 38.76 | 39.00 |
| 69.00 | 39.33 | 40.00 |
| 70.00 | 39.90 | 40.00 |
| 71.00 | 40.47 | 41.00 |
| 72.00 | 41.04 | 42.00 |
| 73.00 | 41.61 | 42.00 |
| 74.00 | 42.18 | 43.00 |
| 75.00 | 42.75 | 43.00 |
| 76.00 | 43.32 | 44.00 |
| 77.00 | 43.89 | 44.00 |
| 78.00 | 44.46 | 45.00 |
| 79.00 | 45.03 | 46.00 |
| 80.00 | 45.60 | 46.00 |
| 81.00 | 46.17 | 47.00 |
| 82.00 | 46.74 | 47.00 |

| Budgetary Deficit | Fifty-Seven Percent | Grant |
|---|---|---|
| 83.00 | 47.31 | 48.00 |
| 84.00 | 47.88 | 48.00 |
| 85.00 | 48.45 | 49.00 |
| 86.00 | 49.02 | 50.00 |
| 87.00 | 49.59 | 50.00 |
| 88.00 | 50.16 | 51.00 |
| 89.00 | 50.73 | 51.00 |
| 90.00 | 51.30 | 52.00 |
| 91.00 | 51.87 | 52.00 |
| 92.00 | 52.44 | 53.00 |
| 93.00 | 53.01 | 54.00 |
| 94.00 | 53.58 | 54.00 |
| 95.00 | 54.15 | 55.00 |
| 96.00 | 54.72 | 55.00 |
| 97.00 | 55.29 | 56.00 |
| 98.00 | 55.86 | 56.00 |
| 99.00 | 56.43 | 57.00 |
| 100.00 | 57.00 | 57.00 |
| 101.00 | 57.57 | 58.00 |
| 102.00 | 58.14 | 59.00 |
| 103.00 | 58.71 | 59.00 |
| 104.00 | 59.28 | 60.00 |
| 105.00 | 59.85 | 60.00 |
| 106.00 | 60.42 | 61.00 |
| 107.00 | 60.99 | 61.00 |
| 108.00 | 61.56 | 62.00 |
| 109.00 | 62.13 | 63.00 |
| 110.00 | 62.70 | 63.00 |
| 111.00 | 63.27 | 64.00 |
| 112.00 | 63.84 | 64.00 |
| 113.00 | 64.41 | 65.00 |
| 114.00 | 64.98 | 65.00 |
| 115.00 | 65.55 | 66.00 |
| 116.00 | 66.12 | 67.00 |
| 117.00 | 66.69 | 67.00 |
| 118.00 | 67.26 | 68.00 |
| 119.00 | 67.83 | 68.00 |
| 120.00 | 68.40 | 69.00 |
| 121.00 | 68.97 | 69.00 |
| 122.00 | 69.54 | 70.00 |
| 123.00 | 70.11 | 71.00 |
| 124.00 | 70.68 | 71.00 |
| 125.00 | 71.25 | 72.00 |
| 126.00 | 71.82 | 72.00 |
| 127.00 | 72.39 | 73.00 |
| 128.00 | 72.96 | 73.00 |
| 129.00 | 73.53 | 74.00 |
| 130.00 | 74.10 | 75.00 |
| 131.00 | 74.67 | 75.00 |
| 132.00 | 75.24 | 76.00 |
| 133.00 | 75.81 | 76.00 |
| 134.00 | 76.38 | 77.00 |
| 135.00 | 76.95 | 77.00 |
| 136.00 | 77.52 | 78.00 |
| 137.00 | 78.09 | 79.00 |
| 138.00 | 78.66 | 79.00 |
| 139.00 | 79.23 | 80.00 |
| 140.00 | 79.80 | 80.00 |
| 141.00 | 80.37 | 81.00 |
| 142.00 | 80.94 | 81.00 |
| 143.00 | 81.51 | 82.00 |
| 144.00 | 82.08 | 83.00 |
| 145.00 | 82.65 | 83.00 |
| 146.00 | 83.22 | 84.00 |
| 147.00 | 83.79 | 84.00 |
| 148.00 | 84.36 | 85.00 |
| 149.00 | 84.93 | 85.00 |
| 150.00 | 85.50 | 86.00 |
| 151.00 | 86.07 | 87.00 |
| 152.00 | 86.64 | 87.00 |
| 153.00 | 87.21 | 88.00 |
| 154.00 | 87.78 | 88.00 |
| 155.00 | 88.35 | 89.00 |
| 156.00 | 88.92 | 89.00 |
| 157.00 | 89.49 | 90.00 |
| 158.00 | 90.06 | 91.00 |
| 159.00 | 90.63 | 91.00 |
| 160.00 | 91.20 | 92.00 |
| 161.00 | 91.77 | 92.00 |
| 162.00 | 92.34 | 93.00 |
| 163.00 | 92.91 | 93.00 |
| 164.00 | 93.48 | 94.00 |
| 165.00 | 94.05 | 95.00 |
| 166.00 | 94.62 | 95.00 |
| 167.00 | 95.19 | 96.00 |
| 168.00 | 95.76 | 96.00 |
| 169.00 | 96.33 | 97.00 |
| 170.00 | 96.90 | 97.00 |
| 171.00 | 97.47 | 98.00 |
| 172.00 | 98.04 | 99.00 |
| 173.00 | 98.61 | 99.00 |
| 174.00 | 99.18 | 100.00 |

| Budgetary Deficit | Fifty-Seven Percent | Grant | Budgetary Deficit | Fifty-Seven Percent | Grant |
|---|---|---|---|---|---|
| 175.00 | 99.75 | 100.00 | 221.00 | 125.97 | 126.00 |
| 176.00 | 100.32 | 101.00 | 222.00 | 126.54 | 127.00 |
| 177.00 | 100.89 | 101.00 | 223.00 | 127.11 | 128.00 |
| 178.00 | 101.46 | 102.00 | 224.00 | 127.68 | 128.00 |
| 179.00 | 102.03 | 103.00 | 225.00 | 128.25 | 129.00 |
| 180.00 | 102.60 | 103.00 | 226.00 | 128.82 | 129.00 |
| 181.00 | 103.17 | 104.00 | 227.00 | 129.39 | 130.00 |
| 182.00 | 103.74 | 104.00 | 228.00 | 129.96 | 130.00 |
| 183.00 | 104.31 | 105.00 | 229.00 | 130.53 | 131.00 |
| 184.00 | 104.88 | 105.00 | 230.00 | 131.10 | 132.00 |
| 185.00 | 105.45 | 106.00 | 231.00 | 131.67 | 132.00 |
| 186.00 | 106.02 | 107.00 | 232.00 | 132.24 | 133.00 |
| 187.00 | 106.59 | 107.00 | 233.00 | 132.81 | 133.00 |
| 188.00 | 107.16 | 108.00 | 234.00 | 133.38 | 134.00 |
| 189.00 | 107.73 | 108.00 | 235.00 | 133.95 | 134.00 |
| 190.00 | 108.30 | 109.00 | 236.00 | 134.52 | 135.00 |
| 191.00 | 108.87 | 109.00 | 237.00 | 135.09 | 136.00 |
| 192.00 | 109.44 | 110.00 | 238.00 | 135.66 | 136.00 |
| 193.00 | 110.01 | 111.00 | 239.00 | 136.23 | 137.00 |
| 194.00 | 110.58 | 111.00 | 240.00 | 136.80 | 137.00 |
| 195.00 | 111.15 | 112.00 | 241.00 | 137.37 | 138.00 |
| 196.00 | 111.72 | 112.00 | 242.00 | 137.94 | 138.00 |
| 197.00 | 112.29 | 113.00 | 243.00 | 138.51 | 139.00 |
| 198.00 | 112.86 | 113.00 | 244.00 | 139.08 | 140.00 |
| 199.00 | 113.43 | 114.00 | 245.00 | 139.65 | 140.00 |
| 200.00 | 114.00 | 114.00 | 246.00 | 140.22 | 141.00 |
| 201.00 | 114.57 | 115.00 | 247.00 | 140.79 | 141.00 |
| 202.00 | 115.14 | 116.00 | 248.00 | 141.36 | 142.00 |
| 203.00 | 115.71 | 116.00 | 249.00 | 141.93 | 142.00 |
| 204.00 | 116.28 | 117.00 | 250.00 | 142.50 | 143.00 |
| 205.00 | 116.85 | 117.00 | 251.00 | 143.07 | 144.00 |
| 206.00 | 117.42 | 118.00 | 252.00 | 143.64 | 144.00 |
| 207.00 | 117.99 | 118.00 | 253.00 | 144.21 | 145.00 |
| 208.00 | 118.56 | 119.00 | 254.00 | 144.78 | 145.00 |
| 209.00 | 119.13 | 120.00 | 255.00 | 145.35 | 146.00 |
| 210.00 | 119.70 | 120.00 | 256.00 | 145.92 | 146.00 |
| 211.00 | 120.27 | 121.00 | 257.00 | 146.49 | 147.00 |
| 212.00 | 120.84 | 121.00 | 258.00 | 147.06 | 148.00 |
| 213.00 | 121.41 | 122.00 | 259.00 | 147.63 | 148.00 |
| 214.00 | 121.98 | 122.00 | 260.00 | 148.20 | 149.00 |
| 215.00 | 122.55 | 123.00 | 261.00 | 148.77 | 149.00 |
| 216.00 | 123.12 | 124.00 | 262.00 | 149.34 | 150.00 |
| 217.00 | 123.69 | 124.00 | 263.00 | 149.91 | 150.00 |
| 218.00 | 124.26 | 125.00 | 264.00 | 150.48 | 151.00 |
| 219.00 | 124.83 | 125.00 | 265.00 | 151.05 | 152.00 |
| 220.00 | 125.40 | 126.00 | 266.00 | 151.62 | 152.00 |

| Budgetary Deficit | Fifty-Seven Percent | Grant | Budgetary Deficit | Fifty-Seven Percent | Grant |
|---|---|---|---|---|---|
| 267.00 | 152.19 | 153.00 | 314.00 | 178.98 | 179.00 |
| 268.00 | 152.76 | 153.00 | 315.00 | 179.55 | 180.00 |
| 269.00 | 153.33 | 154.00 | 316.00 | 180.12 | 181.00 |
| 270.00 | 153.90 | 154.00 | 317.00 | 180.69 | 181.00 |
| 271.00 | 154.47 | 155.00 | 318.00 | 181.26 | 182.00 |
| 272.00 | 155.04 | 156.00 | 319.00 | 181.83 | 182.00 |
| 273.00 | 155.61 | 156.00 | 320.00 | 182.40 | 183.00 |
| 274.00 | 156.18 | 157.00 | 321.00 | 182.97 | 183.00 |
| 275.00 | 156.75 | 157.00 | 322.00 | 183.54 | 184.00 |
| 276.00 | 157.32 | 158.00 | 323.00 | 184.11 | 185.00 |
| 277.00 | 157.89 | 158.00 | 324.00 | 184.68 | 185.00 |
| 278.00 | 158.46 | 159.00 | 325.00 | 185.25 | 186.00 |
| 279.00 | 159.03 | 160.00 | 326.00 | 185.82 | 186.00 |
| 280.00 | 159.60 | 160.00 | 327.00 | 186.39 | 187.00 |
| 281.00 | 160.17 | 161.00 | 328.00 | 186.96 | 187.00 |
| 282.00 | 160.74 | 161.00 | 329.00 | 187.53 | 188.00 |
| 283.00 | 161.31 | 162.00 | 330.00 | 188.10 | 189.00 |
| 284.00 | 161.88 | 162.00 | 331.00 | 188.67 | 189.00 |
| 285.00 | 162.45 | 163.00 | 332.00 | 189.24 | 190.00 |
| 286.00 | 163.02 | 164.00 | 333.00 | 189.81 | 190.00 |
| 287.00 | 163.59 | 164.00 | 334.00 | 190.38 | 191.00 |
| 288.00 | 164.16 | 165.00 | 335.00 | 190.95 | 191.00 |
| 289.00 | 164.73 | 165.00 | 336.00 | 191.52 | 192.00 |
| 290.00 | 165.30 | 166.00 | 337.00 | 192.09 | 193.00 |
| 291.00 | 165.87 | 166.00 | 338.00 | 192.66 | 193.00 |
| 292.00 | 166.44 | 167.00 | 339.00 | 193.23 | 194.00 |
| 293.00 | 167.01 | 168.00 | 340.00 | 193.80 | 194.00 |
| 294.00 | 167.58 | 168.00 | 341.00 | 194.37 | 195.00 |
| 295.00 | 168.15 | 169.00 | 342.00 | 194.94 | 195.00 |
| 296.00 | 168.72 | 169.00 | 343.00 | 195.51 | 196.00 |
| 297.00 | 169.29 | 170.00 | 344.00 | 196.08 | 197.00 |
| 298.00 | 169.86 | 170.00 | 345.00 | 196.65 | 197.00 |
| 299.00 | 170.43 | 171.00 | 346.00 | 197.22 | 198.00 |
| 300.00 | 171.00 | 171.00 | 347.00 | 197.79 | 198.00 |
| 301.00 | 171.57 | 172.00 | 348.00 | 198.36 | 199.00 |
| 302.00 | 172.14 | 173.00 | 349.00 | 198.93 | 199.00 |
| 303.00 | 172.71 | 173.00 | 350.00 | 199.50 | 200.00 |
| 304.00 | 173.28 | 174.00 | 351.00 | 200.07 | 201.00 |
| 305.00 | 173.85 | 174.00 | 352.00 | 200.64 | 201.00 |
| 306.00 | 174.42 | 175.00 | 353.00 | 201.21 | 202.00 |
| 307.00 | 174.99 | 175.00 | 354.00 | 201.78 | 202.00 |
| 308.00 | 175.56 | 176.00 | 355.00 | 202.35 | 203.00 |
| 309.00 | 176.13 | 177.00 | 356.00 | 202.92 | 203.00 |
| 310.00 | 176.70 | 177.00 | 357.00 | 203.49 | 204.00 |
| 311.00 | 177.27 | 178.00 | 358.00 | 204.06 | 205.00 |
| 312.00 | 177.84 | 178.00 | 359.00 | 204.63 | 205.00 |
| 313.00 | 178.41 | 179.00 | 360.00 | 205.20 | 206.00 |

| Budgetary Deficit | Fifty-Seven Percent | Grant | Budgetary Deficit | Fifty-Seven Percent | Grant |
|---|---|---|---|---|---|
| 361.00 | 205.77 | 206.00 | 406.00 | 231.42 | 232.00 |
| 362.00 | 206.34 | 207.00 | 407.00 | 231.99 | 232.00 |
| 363.00 | 206.91 | 207.00 | 408.00 | 232.56 | 233.00 |
| 364.00 | 207.48 | 208.00 | 409.00 | 233.13 | 234.00 |
| 365.00 | 208.05 | 209.00 | 410.00 | 233.70 | 234.00 |
| 366.00 | 208.62 | 209.00 | 411.00 | 234.27 | 235.00 |
| 367.00 | 209.19 | 210.00 | 412.00 | 234.84 | 235.00 |
| 368.00 | 209.76 | 210.00 | 413.00 | 235.41 | 236.00 |
| 369.00 | 210.33 | 211.00 | 414.00 | 235.98 | 236.00 |
| 370.00 | 210.90 | 211.00 | 415.00 | 236.55 | 237.00 |
| 371.00 | 211.47 | 212.00 | 416.00 | 237.12 | 238.00 |
| 372.00 | 212.04 | 213.00 | 417.00 | 237.69 | 238.00 |
| 373.00 | 212.61 | 213.00 | 418.00 | 238.26 | 239.00 |
| 374.00 | 213.18 | 214.00 | 419.00 | 238.83 | 239.00 |
| 375.00 | 213.75 | 214.00 | 420.00 | 239.40 | 240.00 |
| 376.00 | 214.32 | 215.00 | 421.00 | 239.97 | 240.00 |
| 377.00 | 214.89 | 215.00 | 422.00 | 240.54 | 241.00 |
| 378.00 | 215.46 | 216.00 | 423.00 | 241.11 | 242.00 |
| 379.00 | 216.03 | 217.00 | 424.00 | 241.68 | 242.00 |
| 380.00 | 216.60 | 217.00 | 425.00 | 242.25 | 243.00 |
| 381.00 | 217.17 | 218.00 | 426.00 | 242.82 | 243.00 |
| 382.00 | 217.74 | 218.00 | 427.00 | 243.39 | 244.00 |
| 383.00 | 218.31 | 219.00 | 428.00 | 243.96 | 244.00 |
| 384.00 | 218.88 | 219.00 | 429.00 | 244.53 | 245.00 |
| 385.00 | 219.45 | 220.00 | 430.00 | 245.10 | 246.00 |
| 386.00 | 220.02 | 221.00 | 431.00 | 245.67 | 246.00 |
| 387.00 | 220.59 | 221.00 | 432.00 | 246.24 | 247.00 |
| 388.00 | 221.16 | 222.00 | 433.00 | 246.81 | 247.00 |
| 389.00 | 221.73 | 222.00 | 434.00 | 247.38 | 248.00 |
| 390.00 | 222.30 | 223.00 | 435.00 | 247.95 | 248.00 |
| 391.00 | 222.87 | 223.00 | 436.00 | 248.52 | 249.00 |
| 392.00 | 223.44 | 224.00 | 437.00 | 249.09 | 250.00 |
| 393.00 | 224.01 | 225.00 | 438.00 | 249.66 | 250.00 |
| 394.00 | 224.58 | 225.00 | 439.00 | 250.23 | 251.00 |
| 395.00 | 225.15 | 226.00 | 440.00 | 250.80 | 251.00 |
| 396.00 | 225.72 | 226.00 | 441.00 | 251.37 | 252.00 |
| 397.00 | 226.29 | 227.00 | 442.00 | 251.94 | 252.00 |
| 398.00 | 226.86 | 227.00 | 443.00 | 252.51 | 253.00 |
| 399.00 | 227.43 | 228.00 | 444.00 | 253.08 | 254.00 |
| 400.00 | 228.00 | 228.00 | 445.00 | 253.65 | 254.00 |
| 401.00 | 228.57 | 229.00 | 446.00 | 254.22 | 255.00 |
| 402.00 | 229.14 | 230.00 | 447.00 | 254.79 | 255.00 |
| 403.00 | 229.71 | 230.00 | 448.00 | 255.36 | 256.00 |
| 404.00 | 230.28 | 231.00 | 449.00 | 255.93 | 256.00 |
| 405.00 | 230.85 | 231.00 | 450.00 | 256.50 | 257.00 |

| Budgetary Deficit | Fifty-Seven Percent | Grant |
|---|---|---|
| 451.00 | 257.07 | 258.00 |
| 452.00 | 257.64 | 258.00 |
| 453.00 | 258.21 | 259.00 |
| 454.00 | 258.78 | 259.00 |
| 455.00 | 259.35 | 260.00 |
| 456.00 | 259.92 | 260.00 |
| 457.00 | 260.49 | 261.00 |
| 458.00 | 261.06 | 262.00 |
| 459.00 | 261.63 | 262.00 |
| 460.00 | 262.20 | 263.00 |
| 461.00 | 262.77 | 263.00 |
| 462.00 | 263.34 | 264.00 |
| 463.00 | 263.91 | 264.00 |
| 464.00 | 264.48 | 265.00 |
| 465.00 | 265.05 | 266.00 |
| 466.00 | 265.62 | 266.00 |
| 467.00 | 266.19 | 267.00 |
| 468.00 | 266.76 | 267.00 |
| 469.00 | 267.33 | 268.00 |
| 470.00 | 267.90 | 268.00 |
| 471.00 | 268.47 | 269.00 |
| 472.00 | 269.04 | 270.00 |
| 473.00 | 269.61 | 270.00 |
| 474.00 | 270.18 | 271.00 |
| 475.00 | 270.75 | 271.00 |
| 476.00 | 271.32 | 272.00 |
| 477.00 | 271.89 | 272.00 |
| 478.00 | 272.46 | 273.00 |
| 479.00 | 273.03 | 274.00 |
| 480.00 | 273.60 | 274.00 |
| 481.00 | 274.17 | 275.00 |
| 482.00 | 274.74 | 275.00 |
| 483.00 | 275.31 | 276.00 |
| 484.00 | 275.88 | 276.00 |
| 485.00 | 276.45 | 277.00 |
| 486.00 | 277.02 | 278.00 |
| 487.00 | 277.59 | 278.00 |
| 488.00 | 278.16 | 279.00 |
| 489.00 | 278.73 | 279.00 |
| 490.00 | 279.30 | 280.00 |
| 491.00 | 279.87 | 280.00 |
| 492.00 | 280.44 | 281.00 |
| 493.00 | 281.01 | 282.00 |
| 494.00 | 281.58 | 282.00 |
| 495.00 | 282.15 | 283.00 |
| 496.00 | 282.72 | 283.00 |
| 497.00 | 283.29 | 284.00 |
| 498.00 | 283.86 | 284.00 |
| 499.00 | 284.43 | 285.00 |
| 500.00 | 285.00 | 285.00 |

## CHART 1
## STANDARD ALLOWANCES FOR BASIC REQUIREMENTS AND SHELTER

### BASIC REQUIREMENTS

Basic Personal and Household Needs - AABD

| | Alone | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10 or more) |
|---|---|---|---|---|---|---|---|---|---|---|
| Food | $35.00 | 32.00 | 30.00 | 28.50 | 27.00 | 25.50 | 25.50 | 25.50 | 25.50 | 25.50 |
| Clothing | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 |
| Incidentals | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 |
| Laundry | 4.00 | 3.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| Transportation | 1.50 | 1.50 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| HH Expenses | 11.50 | 6.50 | 4.50 | 4.00 | 3.50 | 3.00 | 2.50 | 2.25 | 2.00 | 1.75 |
| | 64.00 | 55.00 | 48.50 | 46.50 | 44.50 | 42.50 | 42.00 | 41.75 | 41.50 | 41.25 |

| | |
|---|---|
| Restaurant Meals | $63.50 |

Basic Personal and Household Needs - AFDC

| | Alone | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10 or more) |
|---|---|---|---|---|---|---|---|---|---|---|
| Food | $34.00 | 31.00 | 29.00 | 27.50 | 26.00 | 24.50 | 24.50 | 24.50 | 24.50 | 24.50 |
| Clothing | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 |
| Personal-Incidentals | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 |
| HH Incidentals | 11.50 | 6.50 | 4.50 | 4.00 | 3.50 | 3.00 | 2.50 | 2.25 | 2.00 | 1.75 |
| | $53.75 | 45.75 | 41.75 | 39.75 | 37.75 | 35.75 | 35.25 | 35.00 | 34.75 | 34.50 |

### SHELTER - AABD and AFDC

The following shelter maximums apply to the number of persons whose needs are being considered in determining the amount of each assistance grant.

| | Recipient alone in grant or 2 persons in same grant | 3 or 4 persons in same grant | 5 or more persons in same grant |
|---|---|---|---|
| MAXIMUM | $50.00 | $65.00 | $75.00 |

Standard allowances for the following items may be included in these shelter maximums irrespective of the number of persons in the family:

| | | | |
|---|---|---|---|
| Water | $2.50 | Sewage Disposal | $1.50 |
| Garbage Disposal | $2.50 | Upkeep and Incidental Repairs | $5.00 |

EXHIBIT B

## AFDC

| TOTAL # PERSONS IN BUDGET | TOTAL NO.OF PERSONS IN HOUSEHOLD RECEIVING PUBLIC ASSISTANCE | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 mor |
| 1 | 53.75 | 45.75 | 41.75 | 39.75 | 37.75 | 35.75 | 35.25 | 35.00 | 34.75 | 34.50 |
| 2 | | 91.50 | 83.50 | 79.50 | 75.50 | 71.50 | 70.50 | 70.00 | 69.50 | 69.00 |
| 3 | | | 125.25 | 119.25 | 113.25 | 107.25 | 105.75 | 105.00 | 104.25 | 103.50 |
| 4 | | | | 159.00 | 151.00 | 143.00 | 141.00 | 140.00 | 139.00 | 138.00 |
| 5 | | | | | 188.75 | 178.75 | 176.25 | 175.00 | 173.75 | 172.50 |
| 6 | | | | | | 214.50 | 211.50 | 210.00 | 208.50 | 207.00 |
| 7 | | | | | | | 246.75 | 245.00 | 243.25 | 241.50 |
| 8 | | | | | | | | 280.00 | 278.00 | 276.00 |
| 9 | | | | | | | | | 312.75 | 310.50 |
| 10 or more | | | | | | | | | | 345.00 |
| Maximum Rent | 50.00 | 50.00 | 65.00 | 65.00 | 75.00 | 75.00 | 75.00 | 75.00 | 75.00 | 75.00 |

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

GLORIA HODGE, et al., )

Plaintiff, )

vs. )

THE DEPARTMENT OF PUBLIC )
WELFARE OF THE STATE OF
FLORIDA, et al., )

Defendants. )

)

## MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs respectfully move this Honorable Court for a temporary restraining order under the authority of 28 U.S.C.§§1651, 2284, restraining defendants and each of them, their agents, servants and employees and successors from adjusting downward from 65% to 57% of budgetary deficiency the amount which was, or would have been paid during January, 1969, and the amount payable in any future months to recipients under the Florida Aid to Families with Dependent Children Program, and from paying any such reduced amount, and in support thereof, state:

1. Plaintiffs pray that this relief be granted pending hearing and determination of motion for preliminary injunction on the ground that they will suffer immediate and irreparable injury, loss and damage before full notice can be served and a hearing can be had thereon, as more fully appears in the Complaint filed herewith.

2. On November 14, 1968, the Florida Department of Public Welfare announced publicly that all welfare grants to AFDC families will be reduced by about 12% regardless of individual need, commencing January, 1969.

3. Unless this Court enjoins defendants from implementing the percentage reduction, plaintiffs will be unable

to pay past bills and adequately feed, house and clothe themselves and their families. This Court should notice judicially that the least delay must necessarily cause severe deprivation to people whose resources do not allow them to protect their life from the daily threat of starvation, eviction and default judgments. See copy of unsolicited letter attached hereto to undersigned counsel from named plaintiff NELL SIMPSON, eloquently setting forth the plight of plaintiffs and the class they represent.

4. Defendants will suffer no damage because payments made for January at the previously established 65% limitation may be pro rata reduced at a subsequent date if plaintiffs herein are unsuccessful in this cause, thereby permitting the Department of Welfare to make full recovery of any over payment made during the pendency of this cause.

WHEREFORE and for the foregoing reasons, plaintiffs respectfully request that this Court enter a temporary restraining order to preserve the status quo, pending the final resolution of the issues raised in the Complaint filed herein.

Respectfully submitted,

ALFRED FEINBERG, ESQUIRE
MRS. ELIZABETH J.duFRESNE
HOWARD W. DIXON, ESQUIRE
Legal Services Program, Inc.
395 Northwest First Street
Miami, Florida 33128
Telephone: 379-0822

Attorneys for Plaintiffs

Miami Fla
Nov. 6. 1968
1246 N.W. 62 Lane

Dear

Mr Feinberg

as I am Sitting here to night I am Wonder If you Can Give me Something to make me a little ~~m~~ mare alive mr Feinberg. you see I dont make no haur at Wark an I go at 7.00 an ~~An~~ I am home befare my Childern is out of School. Some time we dont have no Wark an when we dont have no Wark we dont make Any thing. mr Feinberg it Comeing Xmas I dont have Any thing For my Childern. rat naw my Childern need ~~School~~ Shoes They Ask me What are we going to have For Xmas mr Feinberg I Cant Answer Thim all I Can Say. is wait an see I dont make any money. I am in need my Childern need Cloth For School An need mare Food. belive me plase do I borry some money ~~from~~ From where I Wark to Get Thim School Cloth with belive me I am in need mr Feinberg Plase If you dont help me plase sir help my 5 Childern mr Feinberg my legs hurts me So every day

Till I Cant harder Stand on Them some Time I Cant harder get on an off The Bus An you Know it Take 30. cent a day For me to ride to Work an back. For God Sake mr Feinberg ~~you~~ Will you Plase. make my. Childern Smile Come. Xmas. Plase help me. I am going to Tell you This mr. Feinberg Some Time when I Cook I dont even get to eat. While because I Just have Enough For Those 5 Childern I Cant by Food an Cloth are out of $32.66 Aweek. Some time I Fee like taking my on life its Just That hard with me. you see my Childern Father in Pirson For life Plase mr Feinberg ~~[illegible]~~ Answer me back Plase.

Thank you Very Much
Mrs Nell Simpson

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO.

| | | |
|---|---|---|
| GLORIA HODGE, et al., | ) | |
| Plaintiffs, | ) | |
| vs. | ) | MOTION FOR PRELIMINARY INJUNCTION |
| THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, et al., | ) | |
| Defendants. | ) | |

Plaintiffs, by undersigned counsel, respectfully moves this Honorable Court for a preliminary injunction pending the final hearing and determination of the matters and issues raised by the Complaint and prayer for relief set forth therein, and in support thereof, state:

1. Plaintiffs and their families are persons whose very survival depends upon the amount of income received by them from the Welfare Department of the State of Florida in the form of Aid to Families with Dependent Children.

2. The aid received by plaintiffs has been up to December, 1968, limited to 65% of their needs as determined by the Department of Welfare. The aid received by plaintiffs in all other categorical assistance programs, including Aid to the Blind, Aid to the Disabled and Aid to the Aged, is limited by a maximum amount of $75.00 per month.

3. As of January, 1969, and continuing thereafter, the aid received by plaintiffs is to be reduced to 57% of their needs as determined by the Department of Welfare. The aid received by persons in the other categorical assistance programs is not to be reduced, but is to be continued at $75.00 per month maximum.

4. Ostensibly the reduction is due to a depletion in financial resources available to the state to make welfare

expenditures pursuant to its various categorical assistance programs under 42 U.S.C.§601, et seq.

5. Despite the fact that over two-thirds of the state welfare expenditure is made to non- AFDC programs in the State of Florida the cut in welfare expenditures will be placed solely upon the shoulders of the needy children presently receiving AFDC assistance.

6. The regressive reduction for AFDC recipients not only discriminates against such recipients when compared with grantees under other categorical assistance programs, but it is contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, Title 42 U.S.C.§602(a)(23) and the spirit and intention contained therein requiring that by July 1, 1969, the state raise its welfare assistance grants to meet cost of living levels existing at that time.

7. The discriminatory reduction in welfare grants applicable only to AFDC recipients will no doubt result in the further degeneration of family life of AFDC recipients and the destruction of plaintiffs families as family units. Moreover, it will bring about a condition of mental, intellectual and functional debilitation of members of the families, which can be directly traced to the financial and economic deprivations under which plaintiffs are presently burdened and when the cut becomes effective will be further burdened in disproportion to the available welfare expenditures in the State of Florida.

8. Unless restrained by this Court, defendants will continue the policies and practices of discrimination against the plaintiffs and their families by giving to them lower grants and disproportionate reductions than grantees under other categorical assistance programs, which, if permitted to continue will result in the complete degeneration of the family unit, the withdrawal of children from school and the possible

institutionalization of members of the family.

9. Plaintiffs are irreparably injured each day that the defendants are permitted to continue to deny to them their proportionate share of available welfare resources in the State of Florida, as is received by similarly needy grantees under other welfare categorical assistance programs.

10. The issuance of the preliminary injunction herein requested will not cause undue inconvenience to the defendants but will require them to fulfill their obligations of state offices to conduct the Florida Aid to Families With Dependent Children Program in accordance with the supremacy clause of Article VI, Clause 2, of the Constitution of the United States, the due process clause of the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. §601, et seq., and by the federal regulations 33 Fed.Reg.10230, 10231.

A, B(1), (3) and C(8) requiring that:

> Payments be based on the determination of the amounts of assistance needed and that, if full individual payments are precluded by maximum or insufficient funds adjustments will be made by methods applied uniformly statewide.

Respectfully submitted,

ALFRED FEINBERG, ESQUIRE
MRS. ELIZABETH J. duFRESNE
HOWARD W. DIXON, ESQUIRE
LEGAL SERVICES PROGRAM, INC.
395 Northwest First Street
Miami, Florida 33128
Telephone: 379-0822

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

NO. 68 1830 -Civ-TC

FILED
[illegible] MAY '68

NELL SIMPSON and GLORIA HODGE, individually and on behalf of their minor children and all other parents, relatives or minor children similarly situated,

Plaintiffs,

vs.

THE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF FLORIDA, EARL P. SCHOENBERGER, Board Chairman of the Department of Public Welfare of the State of Florida, and EMMETT S. ROBERTS, Director of the Department of Public Welfare of the State of Florida, and their successors in office,

Defendants.

---

## COMPLAINT

1. The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §§2281, 2284 and 1343(3). This is a suit for injunctive relief authorized by Title 42, U.S.C. §§1983 and 2000(d) to redress the deprivation under color of State law, statute, ordinance, regulation, custom or usage of those rights, privileges and immunities secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Supremacy Clause of Article VI, Clause 2, The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and the Federal Society Security Act, 42 U.S.C. §§601-609. This is also a suit for a declaratory judgment pursuant to Title 28, U.S.C. §2201 of rights established by the aforementioned constitutional and statutory provisions.

2. This is a proper case for the determination by a three-judge District Court pursuant to 28 U.S.C. §2281, since it seeks an injunction to restrain the enforcement, operation and execution of statewide regulations set forth in a May 7, 1968 transmittal from EMMETT S. ROBERTS, a defendant herein, to Division and District Directors of the State Department of Public Welfare (a copy of which is attached hereto as Exhibit A1 and A2) by restraining certain officials of the State of Florida from the enforcement and execution of such statewide administrative regulations on the grounds that they are unconstitutional and violative of the Federal Constitution and Statutes aforementioned.

3. This is a proceeding for a preliminary and permanent injunction to enjoin the defendants from continuing to enforce or otherwise apply the regulations as set forth in Exhibit A herein which regulations create a discriminatory, disparate and unequal treatment between welfare recipients in different welfare programs who have equal needs and suffer equal deprivations. This is also a proceeding to declare the policy set forth in Exhibit A unconstitutional and in violation of the Federal Constitution and Statutes set forth in paragraph (1) above.

4. This is a proceeding for preliminary and permanent mandatory injunction to require the defendants to furnish public assistance to plaintiffs and all others similarly situated in accordance with their actual financial needs as computed under the laws and regulations of the State of Florida.

5. This is a class action authorized by Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all persons similarly situated who are needy parents of dependent children and their needy dependent children eligible for Aid to Families with Dependent Children

and who are deemed by the Florida State Department of Welfare to have an unmet budgetary need of $115 $131 per month or less. (See paragraph 16 for explanation) The class is so numerous as to make joinder of all members of the class impracticable. There are questions of law or fact common to the class; the claims of the plaintiffs are typical of the claims of the members of the class, and the plaintiffs will protect and represent the interest of the class.

6. Plaintiffs are also members of a sub-class within the class described in paragraph (5) composed of black persons who have been discriminated against with regard to the determination of their benefits on the basis of race. The members of the sub-class are so numerous as to make joinder impracticable. There are common questions of law and fact, and plaintiffs' claims are typical of the claims of the sub-class.

7. Plaintiff NELL SIMPSON is an adult Negro citizen of the State of Florida and a resident of the City of Miami. She is the mother and sole support of five minor children; Milton 14, Clarence 13, Arabella 11, Charles 10, and Gregory 8. Plaintiff and her children reside in an apartment maintained by her as her home. Plaintiff's net income, derived from her employment as a laundry worker, is $202.34 per month (as determined by the Department of Welfare), and $43.00 $38.00 received by her from the Department of Welfare under the Aid to Families with Dependent Children Program (hereinafter referred to as AFDC). Plaintiff Simpson's total income is thus 235.34 $240.34 per month.

8. Plaintiff GLORIA HODGE is an adult Negro citizen of the State of Florida and a resident of the City of Miami. She is the mother and sole support of three minor children; Ervina 15, Anette 10, and Kathy 6. Plaintiff Hodge resides with her minor children in an apartment maintained by her as her home. Plaintiff

HODGE's total income is derived from support payments from her former husband in the amount of $103 per month, together with $61 ~~$70~~ per month received by her as a welfare grant under the AFDC Program. Plaintiff HODGE's total income is thus $164 ~~$173~~ per month.

9. Defendant EMMETT S. ROBERTS is the Director of the Department of Public Welfare of the State of Florida and is charged by Florida Statutes §409.11 with the administration of the rules and regulations governing all of the state categorical assistance programs; Aid to the Aged, Aid to the Blind, Aid to the Disabled (cumulatively hereinafter referred to as AABD), and Aid to Families with Dependent Children (AFDC).

10. Defendant EARL P. SCHOENBERGER is Board Chairman of the Department of Public Welfare and a member of the Board of Public Welfare of the State of Florida, and is charged by Florida Statutes § 409.02 with the responsibility of promulgating, conducting, supervising and administrating regulations governing the State Department of Public Welfare or causing to be administered, within the State, all social welfare and relief work.

11. At all times pertinent hereto the State of Florida in order to receive Federal funds for the aforementioned categorical public assistance programs, was required by the provisions of Title 42, U.S.C. §§ 601-609 to have formulated and submitted to the Secretary of the United States Department of Health, Education and Welfare for his approval a "State plan" for the categorical assistance programs consistent with the Constitution of the United States and the provisions of the Federal Social Security Act. (42 U.S.C. §§601 et seq.)

12. In fulfillment of its obligations under Federal legislation, the State of Florida has drawn up a plan for the

provision of assistance to eligible needy persons. Pursuant to this plan, the State Department of Public Welfare has established standards for the basic requirements which when [illegible] were ~~are~~ considered essential to all people for the maintenance of a level of living compatible with health and decency. In the AFDC Program these standards include the specific items considered essential and the amount established for their purchase as shown in Exhibit B attached hereto. The basic requirements include amounts for (1) food, (2) clothing, (3) personal incidentals, and (4) household needs. In the AABD Programs, in addition, they include an amount for laundry and transportation. The allowances provided for in Exhibit B shall hereinafter be referred to as "standard allowances".

13. The welfare recipient's budgetary need (for both AABD and AFDC) is determined by the sum of the standard allowances for basic requirements taken together with the actual shelter expenses of the recipient (not to exceed the maximum amount established by the formula set forth at the bottom of Exhibit B). The sum total of the welfare recipient's needs is then balanced against the income received by the recipient from sources other than the welfare grant. The difference between the total budgeted need and this income is then considered the budgetary deficit (hereinafter referred to as the unmet budgetary need) on which the amount of payment shall be based -- up to the maximum grant for the particular category of assistance.

14. When compared to the $3,315 which the Department of Health, Education and Welfare deems a minimum budget compatible with health and decency for a family of four, the $2,688 for AFDC and $3,012 for AABD deemed sufficient by the Department of Welfare of the State of Florida to meet 100% of the needs of a family of four casts substantial doubt upon the credibility of the Department of Welfare's computations. For the

purposes of this case, however, plaintiffs do not question the validity of this determination of need.

15. The maximum grant of assistance for recipients of the AABD Program is $75 per month. This is to say, that qualified applicants for the AABD Program whose unmet budgetary need as calculated by the above described method, is $75 per month or less receive 100% of their need. AABD recipients whose unmet budgetary need is in excess of $75 per month receive a maximum of $75 per month. (See Exhibit A2 3.b.) il The maximum grant allowed to all AFDC recipients is 57% 65% of unmet budgetary need, regardless of the size of the unmet budgetary need as computed by the above method. ( See Exhibit A, Operations Letter) ~~(See Exhibit A1, paragraph 1)~~ The restriction in payments to AFDC recipients is sometimes referred to hereinafter as the "57% ~~"65%~~ limitation". These regulations are applied to the plaintiffs in the following manner:

✓

A. Plaintiff SIMPSON and her five children receive $38.00 $43.00 a month in AFDC benefits. This is computed as follows: The standard allowance for six persons is $214.50. (37.75(6) = $214.50 (See Table contained in Exhibit C for easy computation)). This is the total payment for all expenses save and except rent. Mrs. Simpson's actual rent is $54.00 per month (less than the $75.00 allowed for a family of five or more persons. (See bottom of Exhibit B)) Thus, Mrs. Simpson's total need is $268.50. Mrs. Simpson's net income from her employment is $202.34, thus giving her an unmet budgetary need of $66.16. Mrs. Simpson's AFDC grant is $38.00; 57% $43.00; 65% of her unmet budgetary need. A welfare recipient under any of the AABD Programs with a comparable unmet budgetary need, would have received 100% of that need, or $66.16.

✓

B. Plaintiff HODGE and her three children receive $61.00 $70.00 in AFDC benefits. This is computed as follows: The standard allowance for a family of four is $159.00. Added to this by the

✓

Department of Welfare is a special clothing allowance of $4.00. The actual rent paid by Mrs. Hodge is $35 (less than the maximum amount of $65 allowed to a family of four persons). In addition to these items, Mrs. Hodge receives a special dietary allowance of $12 per month. Thus, Mrs. Hodge's total need as determined by the Department of Welfare is $210 per month. Mrs. Hodge receives approximately $103 per month in support payments from her former husband. Mrs. Hodge's unmet budgetary need or budgetary deficiency is thus $107 per month. Mrs. Hodge's welfare grant is 57% 65% of $107; or $61 ~~$70~~ per month. A single welfare recipient under any of the AABD Programs with the same unmet budgetary need would receive 70% of $107, or $75, the maximum grant allowed to each recipient under the AABD Programs.

16. Because of defendants' arbitrary distinction between the maximum allowable grant in AABD Programs and the maximum allowable grant in AFDC Program, all recipients of the AABD Program whose unmet budgetary need is determined to be $131 ~~$115~~ or less receive between $57 65% and 100% of such need. (All AABD recipients whose unmet budgetary need is $75 or less, receive 100% of unmet need; all persons with unmet need between $75 and $131 ~~$115~~ in the AABD Programs, receive between 100% and 57% ~~65%~~ of such need.) All AFDC recipients deemed to have an unmet budgetary need of $131 ~~$115~~ or less, receive a maximum of 57% ~~65%~~ of such need. Thus, all recipients of the AFDC Program whose unmet budgetary need is $131 ~~$115~~ or less, receive lower welfare grants than recipients of the AABD Programs who are deemed by the Welfare Department to have a similar unmet budgetary need.

17. Of those persons currently receiving AFDC, an overwhelming proportion are members of the black race. Of those persons who are recipients of the AABD Program, only a relatively small proportion are members of the black race. Despite this fact, which is well-known to the defendants herein, they, and each

of them, continue to maintain the arbitrary distinction which exists between the maximum allowable grants in the AABD and AFDC Programs for persons who are otherwise similarly situated.

18. By arbitrarily limiting the amount payable to an AFDC recipient, who is a member of the class and sub-class defined herein, to 57% ~~65%~~ of State-determined subsistance while providing 57% ~~65%~~ to 100% to similarly situated persons in other welfare categories, the State has denied to plaintiffs the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States. Constitutional guarantees of equal protection and due process are fully applicable to the State expenditure policies in general, and to the AABD and AFDC Programs in particular. The imposition of the arbitrary 65% limitation on aid payable to AFDC recipients who are members of the class as defined herein, creates an invidious distinction between AFDC recipients and other applicants for public assistance which bears no reasonable relationship to the purposes of the assistance programs; namely, the furnishing of assistance to the needy, the strengthening of family life, and the encouragement of personal independence. (42 U.S.C. §601).

19. The arbitrary discrimination against all AFDC recipients who are members of the class defined herein, resulting from the 57% 65% limitation, is contrary to the intent of the Social Security Act, 42 U.S.C. §§601 et seq., and regulations promulgated thereunder; that recipients shall be treated equitably.

20. Limiting assistance to 57% 65% of unmet budgetary need for AFDC applicants while not so limiting payment to the AABD applicants, constitutes an invidious discrimination violative of the Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States, because the burden of this limitation falls predominantly on persons of the black race.

21. The racial discrimination alleged above, proscribed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §20000d, pertainsto racial discrimination in the administration of federally funded programs and the Social Security Act, Title 42 U.S.C. §§ 601 et seq. and regulations promulgated thereunder, requiring equitable treatment of all recipients.

22. Defendants' enforcement of the arbitrary distinction between the maximum allowance permitted to AABD recipients and AFDC recipients has caused plaintiffs extreme hardship, suffering and anxiety, including inadequate food, clothing and shelter. Plaintiffs have suffered and will continue to suffer severe and irreparable injury to their health and well-being as a result of the discriminatory provisions aforesaid until such provisions are declared unconstitutional and illegal, and their enforcement enjoined by this Court.

23. No adequate administrative remedy or adequate remedy at law is available to plaintiffs.

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated:

1. That a three-judge District Court be convened to determine this controversy, pursuant to Title 28 U.S.C. §§ 2281 and 2284.

2. That this Court enter a declaratory judgment pursuant to Title 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the ~~65%~~ 57% limitation promulgated and enforced by the defendants herein:

a. Contravenes the purpose and intent of the State Welfare categorical assistance programs as expressed in the Federal Social Security Act, Title 42 U.S.C. §§601 et seq.;

b. Violates and is repugnant to the Equal Protection clause and the Due Process clause of the Fourteenth Amendment to the Constitution of the United States; and,

c. Denies plaintiffs and the class they represent freedom from racial discrimination protected by Title VI of the Civil Rights Act of 1964, 42 U.S.C.§2000d in that they arbitrarily discriminate between a group primarily composed of members of the black race and a group primarily composed of persons of the white race.

3. That this Court enter a preliminary injunction pending the final determination of this matter and a permanent injunction prohibiting, restraining and enjoining defendants from enforcing, applying or implementing the aforesaid Maximum Grant provisions, which on their face and as applied, discriminate in favor of AABD recipients, whose unmet budgetary need is less than $131 $115. and against plaintiffs and members of their class.

4. That this Court enter a preliminary and permanent injunction prohibiting payments of assistance which are less than the minimum subsistance needs as established by the Florida Department of Public Welfare, and order and require the defendants to make welfare payments to plaintiffs and members of their class in accordance with minimum subsistance needs as set forth by the standard allowance determinations of the Florida Department of Public Welfare.

5. That this Court award plaintiffs their costs and disbursements incurred herein and such further other, and additional, or alternative relief as may appear to this Court to be just and proper.

Respectfully submitted,

ALFRED FEINBERG, BRUCE S. ROGOW & HOWARD W.
DIXON, ESQUIRES, LEGAL SERVICES PROGRAM
395 Northwest First Street
Miami, Florida 33128. Telephone: 379-0822

PAUL MICHAEL DODYK & HENRY A. FREEDMAN, ESQS.
Center on Social Welfare Policy & Law
401 West 117 Street
New York, New York 10027 Tel: (212)280-4

BY______________________________
ALFRED FEINBERG, ESQUIRE
Attorney for Plaintiffs

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

December 31, 1968

Alfred Feinberg, Esq.
Economic Opportunity Legal
Services Program, Inc.
395 Northwest First Street
Miami, Florida 33128

Re: Lampton, et al. v. Bonin, et al.

Dear Mr. Feinberg:

In accordance with our telephone conversation today, I enclose copies of the motion and order for continuation of the temporary restraining order in the above captioned case.

Please let us know if you need any information or assistance.

Sincerely yours,

Richard Klein

Richard Klein
For
Carl Rachlin
Legal Director

*Contributions are deductible for income tax purposes*

■ *president:* Andrew E. Norman ■ *vice presidents:* William S. Ellis, Nannette Sachs ■ *secretary:* Ezra Levin ■ *treasurer:* Shelley Appleton ■ *executive director:* Marvin Rich ■ *leadership development director:* Ronnie M. Moore ■ *legal director:* Carl Rachlin ■ *BOARD OF DIRECTORS:* Nils R. Douglas, *chairman* ■ James Baldwin ■ Katrina McCormick Barnes ■ Allan Barton ■ Jonathan Bingham ■ Canon James P. Breeden ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ Michael O. Finkelstein ■ Doris Freedman ■ James T. Harris, Jr. ■ Claude Heckscher ■ Norman Hill ■ Arthur Kimmelfield ■ Dr. Archie Lacey ■ Jeremy Larner ■ Joann List Levinson ■ John Lewis ■ Leon Modeste ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Edward Norton ■ Richard J. Schwartz ■ Elaine Slater ■ Rowland Watts

**ECONOMIC OPPORTUNITY LEGAL SERVICES PROGRAM, INC.**

JOHN E. SMITH, ESQ.
PRESIDENT

HOWARD W. DIXON, ESQ.
EXECUTIVE DIRECTOR

395 N.W. 1ST STREET
MIAMI, FLORIDA 33128
SUITE 202
TELEPHONE 379-0822
(AREA CODE 305)

January 3, 1969

Mr. Richard Klein
Scholarship, Education and Defense Fund
for Racial Equality, Inc.
164 Madison Avenue
New York, New York 10016

Re: Hodge & Simpson v. Dept.of Public Welfare

Dear Mr. Klein:

Judge Merhtens, in whose division the above styled cause has fallen, has refused to issue a TRO and further has refused to even hear us on our Motion for TRO. He has, however, requested that a three judge court be convened and further requested that the order appointing the three judges be issued as expeditiously as possible. In addition, Judge Merhtens has suggested to Chief Judge Brown that this case, together with a previous case filed by us styled Simpson & Hodge v. Department of Public Welfare, a copy of which I am enclosing herein, be consolidated because of the similarity of issues.

The first Simpson & Hodge case is presently before Judge Cabot's division and while Judge Cabot has made application to Chief Judge Brown to convene a three judge court, it has been approximately one month and no court has yet been convened.

It is my opinion that these cases do present similar issues and despite the fact that I filed this independently, I was of the belief that they probably would be consolidated, which of course now they probably will be.

I will keep you apprised of the progress in these cases, but if past experience is any teacher, I do not expect to have a hearing on our motion for preliminary injunction for at least one month,

Very truly yours,

ALFRED FEINBERG
Assistant Director

AF:jp
Enc:

FLORIDA DEPARTMENT OF PUBLIC WELFARE
Jacksonville, Florida

May 7, 1968

To: Division and District Directors

From: Emmett S. Roberts, State Director

Re: Improvements in the Public Assistance programs

The State Budget Commission today approved the following changes in the Public Assistance programs to be effective July 1, 1968.

1. Place in reserve $1,172,300 in General Revenue funds to meet the state's liability due to "limitation on federal matching in the Aid to Families with Dependent Children program as provided in the 1967 Social Security Amendments." Any part of this reserve not required to meet requirements of the 1967 Social Security Amendments can be utilized to increase AFDC payments up to 65% of the unmet budgetary needs (see item 2c).

2. Improve the Aid to Families with Dependent Children as follows:

   a. Increase the budgetary standard for food in the Aid to Families with Dependent Children program to the same amounts currently in effect in the adult programs.

   b. Further increase the budgetary standard for food by $2.00 per person.

   c. Remove the $85 family maximum and the $32, $55 and $78 child maximums and pay up to a maximum of 65% of unmet budgetary need. Until the reserve set-up in item 1 becomes available, it appears we will only be able to pay approximately 60% of unmet budgetary need.

3. Improve the adult (Old Age Assistance, Aid to the Blind, Aid to the Disabled) programs as follows:

a. Increase the budgetary standard for food by $3.00 per person.

b. Increase budgetary standards for homes for the aged and room and board as follows:

Homes for the Aged - Current budgetary standards for this type institution is $135 per month with the new budgetary standard being $200 per month.

Board and Room with Personal Care - Including Foster Homes - the current budgetary standary for this type care is $135 per month with the new budgetary standard being $175 per month.

Board and Room without Personal Care - The current standard for this type care is $111 per month with the new budgetary standard being $150 per month.

The maximum grant remains at $75 with the exception of $135 per month in Foster Home Care.

c. Increase the maximum vendor payment for Nursing Home Care from $100 to $120 per month.

Instructions regarding the implementing of these improvements are being developed and will be distributed as soon as possible.

ESR/nm

HOLDEN, GLADYS ANNA VS. COHEN, WILBUR et al. WASHINGTON, D.C. 1966-1968
([illegible] WITHOUT NOTICE)

**Please Retain Original Order**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
May 2, 1968
ROBERT M. STEARNS
CLERK

GLADYS ANNA HOLDEN,
5061 New Hampshire Avenue, N.W.
Washington, D. C.,

Plaintiff,

vs.

WILBUR COHEN,
Secretary
U. S. Department of Health,
Education and Welfare
330 Independence Avenue, S.W.
Washington, D. C.

and

HAROLD HOWE II,
Commissioner of Education,
U. S. Department of Health,
Education and Welfare
400 Maryland Avenue, S.W.
Washington, D. C.

and

JOHN W. MACY, JR.,
Commissioner
U. S. Civil Service Commission
Washington, D. C.

and

ROBERT E. HAMPTON,
Commissioner
U. S. Civil Service Commission
Washington, D. C.

and

LUDWIG J. ANDOLSEK,
Commissioner
U. S. Civil Service Commission
Washington, D. C.,

Defendants.

Civil Action No. 2889-67

## NOTICE TO TAKE DEPOSITION

TO: Edwin L. Weisl, Jr.
Assistant Attorney General, Civil Division
United States Department of Justice
Washington, D. C.

David G. Bress
United States Attorney for the District of Columbia
United States Courthouse
3rd & Constitution Avenue, N.W.
Washington, D. C.

Attorneys for Defendants

Please take notice that at 10 a.m. on the 28th day of May, 1968, at the offices of the Scholarship, Education, and Defense Fund for Racial Equality at 150 Nassau Street, New York, New York, the plaintiff in the above-entitled action will take the deposition as a witness of David Seeley, whose address is New York City Human Resources Administration, 100 Church Street, New York, New York, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

John R Kramer
John R. Kramer

734 Fifteenth Street, N.W.
Washington, D. C. 20005

Attorney for the Plaintiff

## CERTIFICATE OF SERVICE

I certify that I have, this 2nd day of May, 1966, served the foregoing Notice to Take Deposition upon the defendants by causing copies thereof to be mailed, first-class postage prepaid, to the attorneys for the defendants listed below the caption at the addresses there stated.

John R Kramer
John R. Kramer

A TRUE COPY
5-14-68
ROBERT M. STEARNS, Clerk,
By Dorothy M. Evans
Deputy Clerk

Form PT-M-3

Rule

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLADYS ANNA HOLDEN :
:
Plaintiff :
:
vs : Civil Action No. 2889-67
JOHN GARDNER, et al., :
:
Defendant s :

RECOMMENDATION OF PRETRIAL EXAMINER

Upon consideration of defendants' motion for a protective order, the opposition thereto,

and oral argument thereon,

it is this 7th day of June, 19 68,

RECOMMENDED that said motion be granted and that all discovery herein be stayed to and including August 19, 1968; PROVIDED, that if a motion for summary judgment be pending on said date, discovery shall be stayed until after determination of said motion for summary judgment.

Elizabeth Burton
ASST. PRETRIAL EXAMINER

NOTE: Under Local Civil Rule 9(i)(1) the above Recommendation becomes the order of the Court unless objections thereto are filed within five days in conformity with Rule 9(i)(2).

E. B.

COPIES TO COUNSEL (in person) 6/7/68 ____________
(Date)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLADYS ANNA HOLDEN,

Plaintiff,

v.

JOHN GARDNER, Secretary, U.S. Department of Health, Education and Welfare, et al.,

Defendants.

Civil Action
No. 2889-67

## MOTION FOR PROTECTIVE ORDER

Defendants by their attorney, the United States Attorney for the District of Columbia, move the Court for a protective order under Rule 30(b), F.R.C.P., and pray:

(1) That this Court stay the deposition — taking plaintiff has noticed in New York City for May 28, 1968 of David Seeley, former Acting Assistant Commissioner of Education, Department of Health, Education and Welfare, pending further order of the Court, following upon its disposition of defendants' motion for summary judgment, which will be filed as soon as practicable; and

(2) That this Court further stay all other resort by plaintiff to discovery procedures in this case, pending further order of the Court, following upon its disposition of defendants' motion for summary judgment.

In support hereof, it is averred:

(a) This case involves the discharge of a probationary civil service employee. It presents solely questions of law for determination by the Court. This Court, in the proper performance of its judicial review function, is limited to conducting such review on the basis of the certified administrative records. Those records will be filed with defendants' motion for summary judgment.

(b) Hence, busy defendants' counsel should not now be unwarrantedly burdened and annoyed with the noticed deposition-taking or any other discovery efforts by plaintiff. In our considered judgment, such discovery efforts really serve no useful purpose, relative to proper disposition by the Court of this judicial review litigation as a matter of law. And, in our view, plaintiff will suffer no significant detriment from deferral of discovery, pending disposition by the Court of our motion for summary judgment.

(c) Accordingly, good cause exists for the Court to stay any and all discovery, pending further order of the Court, following upon its disposition of our motion for summary judgment.

We waive oral hearing, and submit this motion for protective order, on the basis of the foregoing statement and the attached memorandum of points and authorities.

/s/
DAVID G. BRESS
United States Attorney

/s/
JOSEPH M. HANNON
Assistant United States Attorney

/s/
GIL ZIMMERMAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Motion for Protective Order together with memorandum of points and authorities in support thereof has been made upon plaintiff by mailing a copy thereof to her attorney, John H. Kramer, Esq., Shea and Gardner, 734 15th Street, N.W., Washington, D.C., on this 16th day of May, 1968.

/s/
GIL ZIMMERMAN
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLADYS ANNA HOLDEN,

Plaintiff,

v.

JOHN GARDNER, Secretary, U.S. Department of Health, Education and Welfare, et al.,

Defendants.

Civil Action
No. 2889-67

# MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I. (a) The Court for "good cause" may order a stay of deposition-taking to protect parties and witnesses from unwarranted annoyance or oppression.

Rule 30(b), F.R.C.P.

(b) Where no litigable issue of fact is involved, the Court may properly deny discovery.

*H. L. Moore Drug Exchange, Inc.* v. *Smith, Kline & French Laboratories*, 384 F.2d 97 (2d Cir. 1967).

(c) It is proper for the Court to defer discovery, to save defendants from unnecessary trouble, annoyance and expense, pending resolution at hearing on defendants' motion for summary judgment, whether defendants are entitled to judgment as matter of law.

*Cf.* *United Transportation Service* v. *National Mediation Board*, 85 U.S.App.D.C. 353,360, 179 F.2d 446,453-454 (1949);

*Ray* v. *Allied Chemical Corp.*, 34 F.R.D. 456,457-458 (S.D.N.Y. 1964) (and cases cited in fn. 2).

II. The scope of permissible judicial review in civil service employee discharge cases is limited: Assuming (arguendo) that plaintiff's claims raises some "litigable" issue of fact (and we deny this), the proper forum to "hear" and decide such factual claims would be the Civil Service Commission, not the Court on limited judicial review of the CSC action taken in the matter.

*Goodman* v. *United States*,
123 U.S.App.D.C. 165,
358 F.2d 532 (1966);

Dabney v. Freeman,
123 U.S.App.D.C. 166,168
358 F.2d 533,535 (1966).

See Mendelson v. Macy,
123 U.S.App.D.C. 43,47,
356 F.2d 796, 800 (1966).

III. (a) The doctrine of "official immunity" bars maintenance of a tort action for civil damages against Federal officers personally for discretionary acts done by them "within the outer perimeter" of their 'line of duty.'

Barr v. Matteo,
360 U.S. 564,573,575 (1959);

Norton v. McShane,
332 F.2d 855,858-859 (5th Cir. 1964);
cert. denied 380 U.S. 981 (1965).

(b) Further, in no event are Federal officers vicariously liable for claimed tortious acts done by subordinates.

Robertson v. Sichel
127 U.S. 507,515 (1888);

Tucker v. Duke,
107 U.S.App.D.C. 253,254,
276 F.2d 499,500 (1960)
(concurring opinion of Bazelon, J.)

See Larson v. Domestic and Foreign Commerce Corporation,
337 U.S. 682,686 (1949) (fn. 6).

IV. In no event (under the settled judicial authorities) is discovery permissible which seeks "to probe the mental processes" whereby a Government official arrived at a discretionary determination entrusted to his judgment.

United States v. Morgan,
313 U.S. 409,422 (1941);

Airline Pilots Assn. v. Quesada,
286 F.2d 319,320 (2d Cir.),
cert. denied 366 U.S. 962 (1961);

Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena,
40 F.R.D. 318,325-326 (D.C. D.C. 1966), affirmed per curiam "for the reasons stated" in District Court opinion, ___ U.S. App.D.C.____, 384 F.2d 979, cert. denied 389 U.S. 952 (1967).

## CONCLUSION

For the foregoing reasons, it is respectfully submitted, the Court should grant defendants' motion for protective order staying discovery, pending further order of the Court following upon its disposition of defendants' motion for summary judgment.

/s/
DAVID G. BRESS
United States Attorney

/s/
JOSEPH M. HANNON
Assistant United States Attorney

/s/
GIL ZIMMERMAN
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| GLADYS ANNA HOLDEN,<br>Plaintiff,<br>v.<br>WILBUR COHEN, Secretary, U.S. Department of Health, Education and Welfare, et al.,<br>Defendants. | ) | Civil Action<br>No. 2889-67 |

## PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Plaintiff opposes defendants' motion under Rule 30(b), Fed. R. Civ. P., for a protective order staying plaintiff's taking of David Seeley's deposition as noticed in New York City on May 28, 1968, until such time as defendants may eventually decide to file a motion for summary judgment and, after appropriate response and argument, this Court disposes of said hypothetical motion. Plaintiff further opposes defendants' anticipatory prayer that this Court absolutely bar plaintiff from any access to any of the discovery procedures set forth in Rules 26-37, Fed. R. Civ. P., for an unlimited period of time, attending disposition of the same non-existent motion.

Plaintiff requests this Court to deny defendants' motion so that the deposition scheduled for May 28 may proceed as planned and, in support, states:

### I. Defendants Have Not Made The Strong Showing Necessary Before This Court Will Condone Precluding Plaintiff From Engaging In Discovery

The right conferred by the Federal Rules of Civil Procedure, and especially Rule 26, to take depositions and otherwise have access to the process of discovery is not easily withdrawn, but rather is to be accorded "a broad and liberal treatment." Hickman v. Taylor, 329 U.S. 495, 507 (1947). See 4 MOORE'S FEDERAL PRACTICE ¶ 26.02[1], 30.06 (1967). The courts neither in this nor in any other federal jurisidction have been willing to preclude a party from inquiring into the facts underlying his opponent's case in the absence of a strong and convincing showing of "annoyance, embarrassment, or oppression." See, e.g., San Soucie v. Schmidt, 108 U.S. App. D. C. 350, 353, 282 F.2d 833,836 (D. C. Cir. 1960) (no factual support whatever to justify wholesale denial of discovery powers to party who sought to take twenty oral depositions). Thus, courts have indeed exercised their discretion to delay discovery until trial when trade secrets were jeopardized, threatening a party with "devastating injury," Ray v. Allied Chemical Corp., 34 F.R.D. 456, 457-458 (S.D.N.Y. 1964), or, in some "rare" instances, MOORE, op. cit. supra, at ¶30.06, have declined to permit any depositions to be taken of high-ranking government officials involved either in making quasi-judicial administrative decisions, see United States v. Morgan, 313 U. S. 409, 422 (1941) (determination by Secretary of Agriculture of reasonable rates under the Packers and Stockyards Act), or in formulating policy. See Airline Pilots Ass'n. v. Quesada, 286 F. 2d 319, 320 (2d Cir.), cert. den., 366 U.S. 962 (1961) (discretionary decision by Federal Aviation Agency Administrator not to permit use of pilots over 60 years of age); Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318, 325-326 (D.D.C. 1966), aff'd per curiam, _____ U.S. App. D.C. ____, 384 F.2d 979, cert. den., 389 U.S. 952 (1967) (Attorney General's policy formulations as to litigation).

None of these situations obtain here. There are no secret processes at stake, no sweeping policy decisions generally affecting executive agency action. What confronts this Court is an employee discharge case in which it is both accepted and highly appropriate for the discharged employee to seek to determine why the Government acted as it did in order to ascertain whether discharge infringed the employee's constitutional or statutory rights. See generally, Meehan v. Macy, No. 20,812 D.C. Cir., April 18, 1968.

Defendants cannot ask this Court to abdicate to the Civil Service Commission as the alleged "proper" fact-finding forum when the very essence of this case revolves around the Commission's prolonged, two-year refusal to entertain plaintiff's case and give her the requisite hearing at which she might have an opportunity to develop vital facts. By seeking to deny plaintiff discovery in this Court while, in the same breath, asserting the legality of cutting her off from a hearing at the agency level, defendants are espousing an unconscionable "heads I win, tails you lose" position. Neither Goodman v. United States, 123 U.S. App. D.C. 165, 358 F.2d 532 (D.C. Cir. 1966) nor Dabney v. Freeman, 123 U.S. App. D.C. 166, 358 F.2d 533 (D.C. Cir. 1966) support the view that an employee is to be totally prevented from inquiring why she has been terminated, particularly at the deposition stage, which in no way involves consumption of the time of the court other than to adjudicate motions such as this attempting to halt discovery. Both cases suggest that the employee is entitled to one evidentiary hearing at the Commission level, but not, as a matter of judicial economy, more than one. Defendants would like not only to refuse plaintiff any hearing at any level, but also to preclude plaintiff from resorting to the even more economical device of discovery.

Defendants have adduced no good cause for stripping plaintiff of her procedural rights. The claim that "defendants' counsel should not now be unwarrantedly burdened and annoyed with the noticed deposition-taking or any other discovery efforts by plaintiff" is fatuous. "No doubt [defendants and their] representatives who are to be examined will be inconvenienced--as are all parties when required to submit to examination--but this is no ground for denial of the deposition-discovery process." Morrison Export Co., Ltd. v. Goldstone, 16 Fed. Rules Serv. 30b.31, Case 4 (S.D.N.Y. 1952). Here it is not even defendants whose deposition is sought. The real extent of their oppression is measured by the approximately three hours of lawyer's time that would be consumed, time that they are obviously loathe to devote to this case. If the mere inconvenience of attending to litigation is sufficient to warrant abrogation of Rule 26, then the rule's significance will be vitiated.

## II. Plaintiff Will Suffer Significant Detriment Should This Motion Be Granted

While defendants are concerned about the inconvenience involved in sending an attorney to sit in at a deposition for half a day, plaintiff is more fundamentally disturbed at the prospect of being foreclosed by defendants' actions for an unspecified number of months, as she has already been foreclosed by defendants' actions for over two years, from confirming her belief, stated clearly in Paragraph IX of her complaint, that she was discharged because of her expression of political views and for no other reason. Her discharge occurred on January 7, 1966, but was decided upon in the months prior to that. Some thirty-plus months later, David Seeley's recollection of why he did what he did to her, what policy orders he was following in suppressing her conviction that the Office of Equal Educational Opportunities was established to enforce Title VI of the Civil Rights Act of 1964, is not getting any fresher. His testimony is crucial to her case, for by it she will be able to prove that her dismissal was a political act purposefully designed to warn her and others of her persuasion that the Executive branch had decided to bow to local and Congressional pressure and go slow in desegregating school systems in the North. The later she obtains his testimony, the less meaningful and less clear it will be. Thirty months blur all edges.

Despite defendants, the facts of why plaintiff was discharged are very much in dispute in this case. If she was ordered to leave for political reasons, she was entitled to an appeal under 5 C.F.R. §315.806. Plaintiff contends that those were the reasons for her firing. Complaint, Paragraph IX(b). Defendants deny it. Answer, Third Defense, IX. Only David Seeley knows the answer. Plaintiff would like to be granted access to him before another month passes and definitely before defendants get around to filing a motion for summary judgment, whenever that may be.

For the foregoing reasons, plaintiff respectfully requests this Court to deny defendants' motion for a protective order.

Respectfully submitted,

John R Kramer

JOHN R. KRAMER
734 Fifteenth Street, N. W.
Washington, D. C. 20005

Attorney for the Plaintiff

## CERTIFICATE OF SERVICE

I certify that I have, this 23rd day of May, 1968, served the foregoing Plaintiff's Opposition to Defendants' Motion For Protective Order upon the defendants by causing copies thereof to be mailed, first-class postage prepaid, to the attorneys for the defendants as follows: Edwin L. Weisl, Jr., Assistant Attorney General, Civil Division, United States Department of Justice, Washington, D. C. and David G. Bress, United States Attorney for the District of Columbia, United States Courthouse, 3rd & Constitution Avenue, N. W., Washington, D. C.

John R Kramer

John R. Kramer

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLADYS ANNA HOLDEN,
5061 New Hampshire Avenue, N.W.
Washington, D.C.,

Plaintiff,

vs.

JOHN GARDNER,
Secretary
Department of Health, Education
and Welfare
330 Independence Avenue, S.W.
Washington, D.C.

and

HAROLD HOWE II,
U.S. Commissioner of Education,
Department of Health, Education
and Welfare
330 Independence Avenue, S.W.
Washington, D.C.

and

JOHN W. MACY, JR.,
U. S. Civil Service Commissioner
U. S. Civil Service Commission
Washington, D.C.

and

ROBERT E. HAMPTON,
U. S. Civil Service Commissioner
U. S. Civil Service Commission
Washington, D.C.

and

LUDWIG J. ANDOLSEK,
U. S. Civil Service Commissioner
U. S. Civil Service Commission
Washington, D.C.,

Defendants.

Civil Action No.

## COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, AND OTHER RELIEF

I.

Plaintiff is a resident of the District of Columbia; the defendants are residents of or can be found in the District of Columbia; the action arises in the District of Columbia under the Constitution and laws of the United States, and the amount in controversy exceeds $10,000, exclusive of interest and costs. Jurisdiction is based on 11 D.C. Code 521 and on 28 U.S.C. §§ 1331, 2201, and 2202.

II.

In this action, plaintiff seeks a declaratory judgment that her dismissal as an employee of the Department of Health, Education and Welfare was unlawful, an injunction ordering her reinstatement, and other relief, on the grounds that her dismissal was in violation of her rights under the First and Fifth Amendments of the Constitution, and in violation of the laws of the United States and regulations of the Civil Service Commission and the Department of Health, Education and Welfare.

III.

Defendants John W. Macy, Jr., Robert E. Hampton and Ludwig J. Andolsek are the duly appointed, qualified and acting United States Civil Service Commissioners, constituting the United States Civil Service Commission (hereinafter called CSC), and as such have responsibilities for employment policies and practices of the United States regarding civil servants of the United States. Defendant John Gardner is the duly appointed, qualified and acting Secretary and highest officer of the Department of Health, Education and Welfare (hereinafter called HEW), and as such has responsibilities for HEW's employment policies and practices and for school desegregation. Defendant Harold Howe II is the duly appointed, qualified and acting United States Commissioner of Education and highest officer of the United States Office of Education (hereinafter called USOE), an agency of HEW, and as such has responsibilities for employment policies and practices within the USOE and for school desegregation.

IV.

Plaintiff is an experienced sociologist with a Master's degree from the University of North Carolina (1955), further post-graduate study at the University of Michigan, and 16 years of extensive work experience, publications, reports, professional affiliations, honors and professional experience in race relations and civil rights, including school desegregation.

V.

On January 11, 1965, Plaintiff was appointed to the position of Education Research and Program Specialist, Grade GS-11, in the Office of Equal Educational Opportunities, the school desegregation program of USOE, HEW. Plaintiff was responsible for searching out and analysing research and educational materials for a clearing house of information pertaining to problems and progress of school desegregation, developing a research and materials library for the school desegregation program, preparing articles and reports, providing consultative services based on equal educational materials, and performing other similar duties. At all times while so employed, Plaintiff conducted herself properly and performed all her assigned duties thoroughly, efficiently, honestly, and capably, and worked well and harmoniously with her fellow staff members and supervisors.

VI.

Before her appointment and during all times herein material, Plaintiff was an active member of the Housing Committee of the Washington chapter of the Congress of Racial Equality, CORE, and as such took part in programs of CORE relating to the desegregation of housing in the Washington, D.C. area, including CORE's public demonstrations of a peaceful nature. These activities were not inconsistent with, and in no way affected, Plaintiff's employment or the work of USOE in which Plaintiff was engaged. Plaintiff believes, and, throughout the year of her employment by USOE, often expressed the view within USOE that USOE should take more affirmative action to desegregate the schools and that Negroes should have equal rights.

## VII.

Defendant Gardner, through his agents, resisted Plaintiff's and others' suggestions that USOE should take more affirmative action to desegregate schools, and sought to prevent plaintiff and others from urging changes in USOE's policies. As a result of Plaintiff's activities and expressions and of similar activities and expressions by other staff members of USOE, Defendant Gardner, through his agents, initiated a pattern of intimidating, supressing and eliminating such staff members from the Office of Education.

## VIII.

As a part of the aforementioned pattern and as a result of Plaintiff's active participation in public civil rights demonstrations and otherwise exercising her constitutional rights under the First Amendment, Defendant Gardner, through his agent and employee, David Seeley, then Acting Director of the Office of Equal Educational Opportunities, told Plaintiff on December 21, 1965 that he was recommending her dismissal from Government service. By letter dated December 28, 1965 and given to Plaintiff by hand on January 3, 1966, Defendant Gardner, through his agent David Seeley, dismissed Plaintiff as of January 7, 1966.

IX.

Plaintiff promptly sought to learn what procedures were available to review her termination and to avail herself of all such procedures:

(a) On January 7, 1966 Plaintiff wrote Defendant Gardner requesting a review and hearing, and requesting advice as to her rights of review and appeal within and without USOE and HEW, including any such procedures available within CSC. On January 10 and February 1, 1966, Defendant Gardner, through his agents, responded that Plaintiff had no right to a review or hearing within USOE or HEW, and that her only appeal lay through a complaint to CSC under 5 C.F.R. § 315.806, alleging that her termination was "based on political reasons not required by statute."

(b) Plaintiff timely appealed to CSC alleging that her termination was "based on political reasons not required by statute." On August 31, 1966 Defendants Macy, Hampton and Andolsek, through their agents, ruled that Plaintiff's appeal had not alleged facts and circumstances within the purview of 5 C.F.R. § 315.806. In so ruling, these Defendants, through their agents, found that "the organizational activities and affiliation supporting Miss Holden's complaint of political discrimination may be recognized as engaged in programs seeking to influence the formulation of public policy, and to promote political action, in the field of civil rights," but held that the term "political reasons" in section 315.806 applied only to "partisan political discrimination."

X.

Plaintiff was discharged because of her expression of political views.

(a) Her discharge for this reason violated the freedom of speech guaranteed her by the First Amendment of the Constitution of the United States.

(b) Her discharge for this reason also violated her rights under the Act of August 2, 1939, 5 U.S.C. § 7324(b) (Hatch Act), which provides that all employees in the Executive Branch of the Federal Government have the right "to express their opinions on all political subjects and candidates."

(c) Her discharge for this reason also constituted political discrimination forbidden by 5 C.F.R. § 713.401.

XI.

Plaintiff's discharge was illegal because it was accomplished without regard to procedural protections guaranteed Plaintiff, and others in her position, by the due process clause of the Fifth Amendment of the Constitution of the United States, and in violation of applicable laws of the United States and regulations of HEW and CSC, including but not limited to the following:

(a) Defendants Gardner and Howe, and their agents, failed to comply with required procedures designed to inform Plaintiff of her supervisors' evaluation of her performance and to give her an adequate opportunity to correct or explain the purported unsatisfactory conduct and character traits falsely attributed to her. As a result Plaintiff was denied "a full and fair trial" during her probationary period, in violation of due process and of Chapter V, Guide 1 of HEW regulations codified in the Personnel Guide for Supervisors.

(1) No signed statement certifying that Plaintiff's performance, conduct and general traits of character had been found unsatisfactory, or recommending that Plaintiff should not be retained beyond the probationary period, was prepared, discussed with Plaintiff, or submitted through supervisory channels during the ninth or tenth months of Plaintiff's probationary period, in violation of the Act of September 30, 1950, 5 U.S.C. §§ 4301-07 (Performance Rating Act), Chapter 315, Subchapter 8-3(a)(5) of CSC regulations codified in the Federal Personnel Manual, and Chapter V, Guide 4, of HEW regulations codified in the Personnel Guide for Supervisors.

(2) Prior to the aforementioned conference of December 21, 1965, Plaintiff was never told of any shortcomings in her work, nor was there any performance evaluation or discussion thereof with her as part of the day-to-day work activities and supervision of Plaintiff, in violation of Chapter IV, Guide 9 and Chapter V, Guide 4 of HEW regulations codified in the Personnel Guide for Supervisors.

(3) Plaintiff was never "given enough factual information about [her] performance or conduct so that the basis for the action is clear," in violation of Chapter VII, Guide 2 of HEW regulations codified in the Personnel Guide for Supervisors.

(b) Plaintiff was denied the rights of notice, detailed charges, and reply, in violation of section 6 of the Act of August 24, 1912, 5 U.S.C. § 7501 (Lloyd-LaFollette Act), and 5 C.F.R. § 315.805(dealing with termination for conduct before appointment, as in the case of political beliefs and expressions held and made before appointment). Defendants Gardner's and Howe's failure, through their agents, to grant Plaintiff a hearing was also an abuse of discretion under section 6 of the Act of August 24, 1912, 5 U.S.C. § 7501 (Lloyd-LaFollette Act).

XII.

The failure of Defendants Macy, Hampton, and Andolsek, through their agents, to entertain Plaintiff's appeal based on her allegation that her termination was for "political reasons not required by statute" violated 5 C.F.R. § 315.806. In addition, these Defendants' failure to take testimony from witnesses or to accord Plaintiff a hearing on this appeal violated 5 C.F.R. § 772.304, and was an abuse of discretion under Chapter 772, Subchapter 3-2(h) of CSC regulations codified in the Federal Personnel Manual.

XIII.

As a result of Defendants' wrongful actions, Plaintiff has been injured by loss of earnings, by extensive pain, suffering and anguish, and by damage to her professional reputation as a sociologist.

XIV.

Plaintiff has exhausted her available administrative remedies, is without adequate remedy at law and will suffer irreparable injury unless the Court grants the relief hereinafter prayed.

**WHEREFORE**, Plaintiff prays for judgment against Defendants

1. Declaring that Plaintiff was unlawfully discharged from her position as Research and Program Specialist in the Office of Equal Educational Opportunities, USOE, HEW.

2. Directing that Plaintiff be restored to the position from which she was unlawfully removed.

3. Directing, in accordance with the provisions of the Act of March 30, 1966, 5 U.S.C. § 652b (Back Pay Act of 1966), that Plaintiff be paid her salary, including amounts representing such salary increases and promotions as Plaintiff should reasonably have received since January 7, 1966, with interest.

4. Directing, in accordance with the provisions of the Act of March 30, 1966, 5 U.S.C. § 652b (Back Pay Act of 1966), that Plaintiff be deemed for all purposes to have rendered service during the period her unlawful termination was in effect, and declaring that her probationary period be deemed successfully completed.

5. Enjoining any future wrongful dismissal of Plaintiff without due process of law or on account of her exercise of her constitutional rights of freedom of speech and peaceable assembly.

6. Directing such other relief as this Court may deem just and proper.

~~7. Directing that Defendants accord Plaintiff a full hearing and opportunity to raise all cognizable questions relating to her termination.~~

Respectfully submitted,

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## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF COLUMBIA

GLADYS ANNA HOLDEN,
5061 New Hampshire Avenue, N. W.
Washington, D. C.

Plaintiff,

vs.

JOHN W. MACY, JR.,
U. S. Civil Service Commissioner
U. S. Civil Service Commission
Washington, D. C.

and

ROBERT E. HAMPTON,
U. S. Civil Service Commissioner
U. S. Civil Service Commission
Washington, D. C.

and

LUDWIG J. ANDOLSEK,
U. S. Civil Service Commissioner
U. S. Civil Service Commission
Washington, D. C.

and

JOHN GARDNER,
Secretary
Department of Health, Education
and Welfare
330 Independence Avenue, S. W.
Washington, D. C.

and

HAROLD HOWE II,
U. S. Commissioner of Education,
Department of Health, Education
and Welfare
330 Independence Avenue, S. W.
Washington, D. C.

Defendants.

Civil Action No. ______

## COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

I.

Plaintiff is a resident of the District of Columbia; the defendants are residents and/or are to be found in the District of Columbia; the action arises under the Constitution and laws of the United States, and the amount in controversy exceeds $10,000, exclusive of interest and costs. Jurisdiction is based on D. C. Code 11-521 and on 28 U.S.C. §§1331, 2201, and 2202.

II.

In this action, plaintiff seeks a declaratory judgment that her dismissal as an employee of the Department of Health, Education and Welfare was unlawful and an injunction ordering either her reinstatement or a hearing, on the grounds that her dismissal was in violation of her rights under the First and Fifth Amendments of the Constitution, and in violation of the laws of the United States and of the regulations of the Civil Service Commission and of the Department of Health, Education and Welfare.

III.

Defendants John W. Macy, Jr., Robert E. Hampton and Ludwig J. Andolsek are the duly appointed, qualified, and acting United States Civil Service Commissioners, constituting the United States Civil Service Commission, and as such have responsibilities for employment policies and practices of the United States regarding civil servants of the United States. Defendant John Gardner is the duly appointed and qualified Secretary and highest officer of the Department of Health, Education and Welfare, hereinafter called HEW, and as such has responsibilities for HEW's employment policies and practices and for school desegregation.

Defendant Harold Howe II is the duly appointed and qualified United States Commissioner of Education and highest officer of the United States Office of Education, an agency of HEW, and as such has responsibilities for employment policies and practices within the United States Office of Education and for school desegregation.

IV.

Plaintiff is an experienced sociologist with a Master's degree from the University of North Carolina (1955), further work toward a Ph.D. at the University of Michigan, and extensive work experience, publications, reports, professional affiliations, honors and volunteer as well as professional experience in race relations and civil rights, including school desegregation.

V.

On January 11, 1965, Plaintiff was appointed to the position of Education Research and Program Specialist, Grade GS-11, in the Office of Equal Educational Opportunities, the school desegregation program of the United States Office of Education, HEW. Plaintiff was responsible for searching out and analysing research and educational materials for a clearing house of information pertaining to problems and progress of school desegregation, developing a research and materials library for the school desegregation program, preparing articles and reports, providing consultative services based on equal educational materials, and performing other duties, ~~set forth more fully in the appended job description, Attachment Number Two~~. Plaintiff at all times, while so employed, conducted herself properly and performed all of her assigned duties thoroughly, efficiently, honestly, and capably.

## VI.

During all times herein material, Plaintiff was an active member of the Housing Committee of the Washington chapter of the Congress of Racial Equality, CORE, and as such took part in programs of CORE relating to the desegregation of housing in the Washington, D. C. area, including CORE's public demonstrations of a peaceful nature. These activities were not inconsistent with, ~~Plaintiff's employment~~ and in no way affected, Plaintiff's employment or the work of the Office of Education in which Plaintiff was engaged. Plaintiff believes, and, throughout the year of her employment by the Office of Education, often expressed the view within the Office that the Office should take more affirmative action to desegregate the schools and that Negroes should have equal rights.

## VII.

As a result of Plaintiff's activities and expressions and of similar activities and expressions by other staff members of the Office of Education, Defendant Gardner, through his agents, initiated a pattern of intimidating, supressing and eliminating such employees from the Office of Education.

## VIII.

As a part of the aforementioned pattern and as a result of Plaintiff's active participation in public civil rights demonstrations and otherwise exercising her constitutional rights under the First Amendment, Defendant Gardner, through his agent and employee, David Seeley, then Acting Director of the Office of Equal Educational Opportunities, illegally and in disregard of Plaintiff's rights under the First Amendment to the Constitution of the United States, told Plaintiff on December 21, 1965 that he was recommending her dismissal from government service. By letter dated December 28, 1965 and given to Plaintiff by hand on January 3, 1966, Defendant Gardner, through his agent, David Seeley, told Plaintiff that she was dismissed as of January 7, 1966.

IX.

Defendants' dismissal of plaintiff was ~~with~~ unlawful in that defendants had failed to complay with rules established by HEW for the benefit of Plaintiff and others similarly situated, in that:

(a) Plaintiff has never been "given enough factual information about [her] performance or conduct so that the basis for the action is clear", pursuant to Chapter VII, Guide 2 of HEW's Personnel Guide for Supervisors; and

(b) No discussion of any shortcomings of Plaintiff with her supervisor took place, nor was there any performance evaluation or discussion thereof with her as part of the day-to-day work activities and supervision of Plaintiff pursuant to Chapter IV, Guide 9 of HEW's Personnel Guide for Supervisors and Chapter V, Guide 4 of HEW's Personnel Guide for Supervisors.

(c) In violation of Chapter 315, Paragraph 8-3 of the Federal Personnel Manual, promulgated by the Civil Service Commission, Subparagraph 5, plaintiff, at no time prior to the aforementioned conference of December 21, 1965, was informed that her performance, conduct and general traits of character were in any way unsatisfactory or advided of any failures of shortcomings;

she was not informed at any time of any evaluation of her work by her supervisor, or given any informed opportunity to correct or explain the purported unsatisfactory conduct and traits of character falsely attributed to her; and, on information and belief, no statement certifying either that her performance, conduct and general traits of character were found satisfactory or unsatisfactory was submitted by her supervisor through supervisory channels between the ninth and tenth month of the probationary period.

X.

Plaintiff was discharged from her position in the government service because of her exercise of rights guaranteed her by the First Amendment to the United States Constitution. The unlawful, arbitrary, and summary discharge of Plaintiff for her public [illegible] protest of housing segregation in the Washington community and for otherwise lawfully expressing her views has deprived Plaintiff of her Constitutionally guaranteed exercise of freedom of speech and her right to peaceably assemble. In addition, these actions constitute political discrimination against plaintiff.

XI.

Defendants, in violation of plaintiff's constitutional right to due process of law, and in violation of regulations of the Civil Service Commission (Sec. ______________), denied plaintiff's request for a hearing on the cause and legality of her discharge. These actions were affirmed by the Civil Service Commission on August 31, 1966.

XII.

As a result of Defendants' wrongful actions, Plaintiff has been injured by loss of earnings, and by extensive pain, suffering and anguish.

## XIII.

Plaintiff has exhausted hereavailable administrative remedies, is without adequate remedy at law and will suffer irreparable injury unless the Court grants the relief hereinafter prayed.

WHEREFORE, Plaintiff prays

1. For a declaration that Plaintiff was unlawfully discharged from her position as Research and Program Specialist in the Office of Equal Educational Opportunities, United States Office of Education, United States Department of Health, Education and Welfare.

2. For an order of this Court decreeing and directing the Defendants to pay Plaintiff her salary, including amounts representing such salary increases and promotions as plaintiff should have reasonably received since January 7, 1966, with interest.

3. For a judgment against the members of the United States Civil Service Commission, the Secretary of the Department of Health, Education and Welfare and the United States Commissioner of Education decreeing and directing that Plaintiff be restored to the position from which she was unlawfully removed.

4. For an injunction against future wrongful dismissal of Plaintiff without due process of law or on account of her exercise of her constitutional rights of freedom of speech and peaceable assembly.

5. For such other and further relief as this Court may deem just and proper.

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Joan Franklin, [redacted]
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New York, New York

File

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLADYS ANNA HOLDEN,
5061 New Hampshire Avenue, N.W.
Washington, D.C.,

Plaintiff,

vs.

JOHN GARDNER,
Secretary
U.S. Department of Health, Education and Welfare
330 Independence Avenue, S.W.
Washington, D.C.

and

HAROLD HOWE II,
Commissioner of Education,
U.S. Department of Health, Education and Welfare
400 Maryland Avenue, S.W.
Washington, D.C.

and

JOHN W. MACY, JR.,
Commissioner
U.S. Civil Service Commission
Washington, D.C.

and

ROBERT E. HAMPTON,
Commissioner
U.S. Civil Service Commission
Washington, D.C.

and

LUDWIG J. ANDOLSEK,
Commissioner
U.S. Civil Service Commission
Washington, D.C.,

Defendants.

Civil Action No.
2889-67

## COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, AND OTHER RELIEF

I.

Plaintiff is a resident of the District of Columbia. Defendants are officials of the United States of America who reside in the District of Columbia. The action arises in the District of Columbia under the Constitution and laws of the United States, and the amount in controversy exceeds $10,000, exclusive of interest and costs. Jurisdiction is based on 11 D.C. Code § 521, 5 U.S.C. §§ 701-06, and on 28 U.S.C. §§ 1331, 2201, and 2202.

## II.

In this action, plaintiff seeks: a declaratory judgment that her dismissal as an employee of the Department of Health, Education and Welfare was unlawful; an injunction ordering her reinstatement; and other relief; on the grounds that her dismissal was in violation of her rights under the First and Fifth Amendments of the Constitution, in violation of the laws of the United States and regulations of the United States Civil Service Commission and the United States Department of Health, Education and Welfare, and in excess of Defendants' authority under law.

## III.

Defendants John W. Macy, Jr., Robert E. Hampton and Ludwig J. Andolsek are the duly appointed, qualified and acting United States Civil Service Commissioners, constituting the United States Civil Service Commission (hereinafter called CSC), and as such have responsibilities for employment policies and practices of the United States regarding civil servants of the United States. Defendant John Gardner is the duly appointed, qualified and acting Secretary and highest officer of the United States Department of Health, Education and Welfare (hereinafter called HEW), and as such has responsibilities for HEW's employment policies and practices and for school desegregation. Defendant Harold Howe II, an agent of Defendant Gardner, is the duly appointed, qualified and acting United States Commissioner of Education and highest officer of the United States Office of Education (hereinafter called USOE), an agency of HEW and as such has responsibilities for employment policies and practices within USOE and for school desegregation.

IV.

Plaintiff is an experienced sociologist with a Master of Arts degree from the University of North Carolina (1955), further post-graduate study at the University of Michigan, and 16 years of extensive work experience, publications, reports, professional affiliations, honors and professional experience in race relations and civil rights, including school desegregation.

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On January 11, 1965, Plaintiff was appointed to the position of Education Research and Program Specialist, Grade GS-11, in the Office of Equal Educational Opportunities, the school desegregation program of USOE, HEW. Plaintiff was responsible for searching out and analysing research and educational materials for a clearinghouse of information pertaining to problems and progress of school desegregation, developing a research and materials library for the school desegregation program, preparing articles and reports, providing consultative services based on equal educational materials, and performing other similar duties. At all times while so employed, Plaintiff conducted herself properly and performed all her assigned duties thoroughly, efficiently, honestly, and capably, and worked well and harmoniously with her fellow staff members and supervisors.

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Before her appointment and during all times herein material, Plaintiff was an active member of the Housing Committee of the Washington chapter of the Congress of Racial Equality, CORE, and as such took part in programs of CORE relating to the desegregation of housing in the Washington, D.C. area, including CORE's public demonstrations of a peaceful nature. These activities were not inconsistent with, and in no way affected, Plaintiff's employment or the work of USOE in which Plaintiff was engaged. Plaintiff believes, and, throughout the year of her employment by USOE, often expressed the view within USOE that USOE should take more affirmative action to desegregate the schools and that Negroes should have equal rights.

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IX.

Plaintiff promptly sought to learn what procedures were available to review her termination and to avail herself of all such procedures:

(a) On January 7, 1966 Plaintiff wrote Defendant Gardner requesting a review and hearing, and requesting advice as to her rights of review and appeal within and without USOE and HEW, including any such procedures available within CSC. On January 10 and February 1, 1966, Defendant Gardner, through his agents, responded that Plaintiff had no right to a review or hearing within USOE or HEW, and that her only appeal lay through a complaint to CSC under 5 C.F.R. § 315.806, alleging that her termination was "based on political reasons not required by statute."

(b) Plaintiff timely appealed to CSC alleging that her termination was "based on political reasons not required by statute." On August 31, 1966 Defendants Macy, Hampton and Andolsek, through their agents, ruled that Plaintiff's appeal had not alleged facts and circumstances within the purview of 5 C.F.R. § 315.806. In so ruling, these Defendants, through their agents, found that "the organizational activities and affiliation supporting Miss Holden's complaint of political discrimination may be recognized as engaged in programs seeking to influence the formulation of public policy, and to promote political action, in the field of civil rights," but held that the term "political reasons" in section 315.806 applied only to "partisan political discrimination."

## X.

Plaintiff was discharged because of her expression of political views.

(a) Her discharge for this reason violated the freedom of speech guaranteed her by the First Amendment of the Constitution of the United States.

(b) Her discharge for this reason also violated her rights under the Act of August 2, 1939, 5 U.S.C. § 7324(b) (Hatch Act), which provides that all employees in the Executive Branch of the Federal Government have the right "to express their opinions on all political subjects and candidates."

(c) Her discharge for this reason also constituted political discrimination forbidden by 5 C.F.R. § 713.401.

## XI.

Plaintiff's discharge was illegal because it was accomplished without regard to procedural protections guaranteed Plaintiff, and others in her position, by the due process clause of the Fifth Amendment of the Constitution of the United States, and in violation of applicable laws of the United States and regulations of HEW and CSC, including but not limited to the following:

(a) Defendants Gardner and Howe, and their agents, failed to comply with required procedures designed to inform Plaintiff of her supervisors' evaluation of her performance and to give her an adequate opportunity to correct or explain the purported unsatisfactory conduct and character traits falsely attributed to her. As a result Plaintiff was denied "a full and fair trial" during her probationary period, in violation of due process and of Chapter V, Guide 1 of HEW regulations codified in the Personnel Guide for Supervisors.

(1) No signed statement certifying that Plaintiff's performance, conduct and general traits of character had been found unsatisfactory, or recommending that Plaintiff should not be retained beyond the probationary period, was prepared, discussed with Plaintiff, or submitted through supervisory channels during the ninth or tenth months of Plaintiff's probationary period. This failure was in violation of: the Act of September 30, 1950, 5 U.S.C. §§ 4301-07 (Performance Rating Act); Chapter 315, Subchapter 8-3(a)(5) of CSC regulations codified in the Federal Personnel Manual; and Chapter V, Guide 4, of HEW regulations codified in the Personnel Guide for Supervisors.

(2) Prior to the aforementioned conference of December 21, 1965, Plaintiff was never told of any shortcomings in her work, nor was there any performance evaluation or discussion thereof with her as part of the day-to-day work activities and supervision of Plaintiff. This failure was in violation of Chapter IV Guide 9 and Chapter V, Guide 4 of HEW regulations codified in the Personnel Guide for Supervisors.

(3) Plaintiff was never "given enough factual information about [her] performance or conduct so that the basis for the action is clear," in violation of Chapter VII, Guide 2 of HEW regulations codified in the Personnel Guide for Supervisors.

(b) Plaintiff was denied the rights of notice, detailed charges, and reply, in violation of section 6 of the Act of August 24, 1912, 5 U.S.C. § 7501 (Lloyd-LaFollette Act), and 5 C.F.R. § 315.805 (dealing with termination for conduct before appointment, as in the case of political beliefs and expressions held and made before appointment). Defendants Gardner's and Howe's failure, through their agents, to grant Plaintiff a hearing was also an abuse of discretion under section 6 of the Act of August 24, 1912, 5 U.S.C. § 7501 (Lloyd-LaFollette Act).

XII.

The failure of Defendants Macy, Hampton, and Andolsek, through their agents, to entertain Plaintiff's appeal based on her allegation that her termination was for "political reasons not required by statute" violated 5 C.F.R. § 315.806. In addition, these Defendants' failure to take testimony from witnesses or to accord Plaintiff a hearing on this appeal violated 5 C.F.R. § 772.304, and was an abuse of discretion under Chapter 772, Subchapter 3-2(h) of CSC regulations codified in the Federal Personnel Manual.

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As a result of Defendants' wrongful actions, Plaintiff has been injured by loss of earnings, by extensive pain, suffering and anguish, and by damage to her professional reputation as a sociologist.

XIV.

Plaintiff has exhausted her available administrative remedies, is without adequate remedy at law and will suffer irreparable injury unless the Court grants the relief hereinafter prayed.

WHEREFORE, Plaintiff prays for judgment against Defendants

1. Declaring that Plaintiff was unlawfully discharged from her position as Research and Program Specialist in the Office of Equal Educational Opportunities, USOE, HEW.

2. Directing that Plaintiff be restored to the position from which she was unlawfully removed.

3. Directing, in accordance with the provisions of the Act of March 30, 1966, 5 U.S.C. § 652b (Back Pay Act of 1966),

that Plaintiff be paid her salary, including amounts representing such salary increases and promotions as Plaintiff should reasonably have received since January 7, 1966, with interest.

4. Directing, in accordance with the provisions of the Act of March 30, 1966, 5 U.S.C. § 652b (Back Pay Act of 1966), that Plaintiff be deemed for all purposes, including successful completion of her probationary period, to have rendered satisfactory service during the period her unlawful termination was in effect.

5. Enjoining any future wrongful dismissal of Plaintiff without due process of law or on account of her exercise of her constitutional rights of freedom of speech.

6. Awarding Plaintiff damages of $25,000 for the injuries alleged in Paragraph XIII, plus reasonable attorney's fees.

7. Directing such other relief as this Court may deem just and proper.

Respectfully submitted,

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Attorney for Plaintiff

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Robert L. Carter
Joan Franklin
Richard F. Bellman
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1790 Broadway
New York, New York

Don't know how much background on my case Marvin Rich gave you. Mordecai Johnson was also pushed out — is now with Civil Rights Commission.

Wash. D.C. Core

February 6, 1966

MAR 2 1966

Dear Carl,

On Jan. 7, I was fired with 4 days' notice from the Office of Education's school desegregation program, the Office of Equal Educational Opportunities. The firing took place 4 days before my year's probation--a standard probation for "career conditional" appointees--ended. The timing is significant, since such arbitrary action would be difficult once Civil Service status was acquired.

The "problem" was that I pushed within the OEEO for a forthright program and that I was critical--within the agency--of OEEO's increasingly timid and ineffective stance vis-a-vis the agency's responsibility to desegregate the schools. I also continued to work actively in Washington CORE, mainly in housing, despite signs that an activist role in local affairs was increasingly unwelcome--"embarrassing to Commissioner Keppel" as OEEO officials phrase it.

The firing shook the OEEO staff greatly and many of them have rallied to my support, despite their own probationary status. (See enclosed petition) Many of the staff see the firing as I see it--as part of a pattern of retrenchment which accelerated greatly following HEW's backing down on the Chicago funds. Since Chicago, leadership positions, responsibility and important assignments have tended more and more to go to "safe," conservative staff who will not make the kinds of reports and recommendations that will lead to another Chicago. The more liberal and concerned staff are being ignored, frozen out and pushed out. Some staff are leaving and others fear their probation will prove "unsatisfactory" and they will be "separated" as I was.

Some of us who are greatly concerned about school desegregation hope that my case can be used as a means of inquiring into and discussing the total OEEO program. As one of the CORE picket signs protesting my firing read, "Civil Rights Law Demands Civil Rights Staff." I have asked for full reinstatement and Washington CORE and others who are backing me have also asked for a reversal of the policy that persons such as myself with pro-civil rights attitudes and activities are disqualified from civil rights programs within HEW.

Would you (1) Get one or more organizations or committees in which you are active to wire or write John Gardner, Secretary, Dept. Health, Education and Welfare, 330 Independence SW, Washington, D. C., protesting my dismissal and asking (a) full reinstatement and (b) a reversal of the policy that pro-civil rights attitudes and activities disqualify persons for staff within HEW civil rights programs.

(2) Ask your Congressman to protest my dismissal to Secretary Gardner and call for an investigation of the Office of Equal Educational Opportunities.

(3) Protest to the Civil Service Commission and ask for favorable action on my appeal and petition. Ask your Congressman to inquire about my petition and express the

should be addressed to James T. Masterson, Chief, Appeals Examining Office, #1416B, Civil Service Commission, 1900 E St. NW, Washington, D. C., with copies to John W. Macy, Chairman, Civil Service Commission.

(4) Send me copies of any wires or correspondence, or resolutions passed at meetings.

Under Secretary Wilbur Cohen of HEW and others are currently answering inquiries with the statement that I was fired for "inadequate performance, of which she had been advised," or "inadequate performance of duties." "Inadequate performance" entered the picture after all the official documents and discussions had taken place. There is also misinformation as to the circumstances of the firing and my job history circulating in Washington, so that it would be well to check with me concerning any reports you might get that I "turned down a reasonable compromise," "refused a transfer to another department," "demanded an apology," etc.

I hope that you can find time to rally to this request. Without support from persons such as yourself, there is little hope for my reinstatement. More important, without your expressed concern, there is little hope for federal responsibility in carrying out the national mandate to desegregate the public schools.

Sincerely,

Anna Holden

Anna Holden

5061 New Hampshire Ave. NW
Washington, D. C. 20011
Phone: 726-0059

March 23, 1966

Miss Anna Holden
5061 New Hampshire Ave., N.W.
Washington, D.C.

Dear Anna:

In reference to your letter of January 1st, regarding your suit against the Office of Education; I wonder what, if anything, new is being done.

Please let me hear from you.

Cordially,
General Counsel

CR:gm

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO
KAS:APP

YOUR REFERENCE

MAY 6 1966

Mr. Paul Miller
Attorney at Law
2000 Ninth Street, N. W.
Washington, D. C. 20001

Dear Mr. Miller:

This is in reference to the appeal of Miss Gladys Anna Holden who filed an appeal with this office on January 17, 1966 protesting her termination during probation from the position of Education Research and Program Specialist (Research Asst.) GS-1720-11, $8961 per annum, Office of Equal Educational Opportunities, Department of Health, Education, and Welfare effective January 7, 1966.

The agency has furnished us a copy of its December 28, 1965 notice to Miss Holden terminating her appointment effective January 7, 1966 for failure to qualify during probation. The reasons for the action are quoted below:

"1. Your failure to accept direction without resentment and bad grace.

2. Your failure to cooperate with other staff members in gathering information from files assigned to your charge.

3. Your failure to use sound judgment in handling inquiries and proposals assigned to you for staff work."

Section 315.804 of the Civil Service regulations provides that an agency may terminate the services of a probationary employee whenever the employee's work performance or conduct fails to demonstrate his fitness or qualifications for continued employment by notifying the employee in writing as to the reason for his separation and the effective date of the action.

Section 315.806 provides that an employee who is removed under the provisions of 315.804 may appeal to the Civil Service Commission on the ground that the action taken was based on political reasons not required by statute or resulted from discrimination because of sex, marital status, or physical handicap.

We reviewed Miss Holden's affidavit of January 17, 1966 and found no allegation that her removal was based on political reasons not required by law or resulted from discrimination because of sex, marital status or physical handicap.

By letter dated February 1, 1966 you advised us that Miss Holden had designated you to represent her in her appeal and on February 7, 1966 you requested additional time to prepare and present a supplemental memorandum in her case. Your request was granted.

On February 16, 1966 we notified you of the Commission's jurisdiction to accept appeals from employees who are removed for failure to qualify during a probationary period of employment. We explained that when an appeal is based on any of the grounds set forth in Section 315.806(b) of the Civil Service Regulations the appellant shall submit affidavit setting forth the facts and circumstances upon which the appeal is based.

In your petition for reinstatement which was received in this office on February 28, 1966 you stated that it was the contention of the petitioner, Miss Holden, that the circumstance of her dismissal was, among other things, an "exercise of Political discrimination by the officials of the Office of Education."

As your petition was not accompanied by an affidavit from the appellant we extended the time for such submission to March 30, 1966 and Miss Holden submitted an affidavit on that date.

In her affidavit Miss Holden stated that she believes her removal was based on political reasons not required by law. She pointed out that her activity with the Congress of Racial Equality was well known to Mr. David S. Seeley, Acting Director, Office of Equal Education Opportunities. She said that Mr. Seeley told her that he felt that her strong, personal position on civil rights interfered with objectivity in the research she engaged in for the Office. She said that Mr. Seeley initiated a pattern of activity to suppress, intimidate and eliminate staff members who participated in local, private, volunteer civil rights activity. As examples she pointed out that Mr. Seeley told Area Captains of the Office that staff should not participate in local civil rights activities or wear "equality" buttons and that picketing, demonstrating and wearing buttons prevented the staff from establishing the proper atmosphere for carrying out official activities. She said Mr. Seeley began employing staff with the condition they would not participate in local civil rights activity. Miss Holden cited several examples of Mr. Seeley's handling of several employees assigned under his supervision. She described these as illustrations of intimidation and suppression of staff in regards to Civil Rights Activities. Miss Holden stated that in spite of the directive that staff should not participate in local, volunteer civil rights activity she continued to work actively in Washington CORE. She indicated that her active, persistent efforts to achieve equal rights for all citizens formed the real basis for her removal.

Miss Holden concluded that "... discrimination on the basis of civil rights organizational affiliation and activity constitutes political discrimination within the meaning of Section 315.806(b) of the Civil Service Regulations for the reason, among others, that such organizations and activities are directed toward changing the character and structure of society and are therefore political in character."

Miss Holden's affidavit recites Mr. Seeley's apparently uniformly applied policy on how his staff should conduct itself with respect to civil rights activity and the disagreement of some staff members, herself included, with this policy.

That there was disagreement with the Acting Director's policy toward civil rights activity by staff employees does not support a conclusion that partisan political considerations were the underlying reasons for the removal of Miss Holden.

Under date of April 18, 1966 Mr. Miller submitted a "Memorandum in Support of Petition for Reinstatement of Miss G. Ann Holden." We have reviewed the memorandum and find that the authorities cited therein do not bring the matter raised by Miss Holden in her affidavit, synopsized above, within the meaning of Section 315.806(b) of the Civil Service Regulations.

We find therefore that Miss Holden's appeal is not within the purview of Section 315.806 of the Civil Service Regulations and her appeal is denied.

This decision becomes a final decision of the Civil Service Commission unless either the appellant or the employing agency files an appeal with the Board of Appeals and Review, U. S. Civil Service Commission, Washington, D. C. 20415, within seven (7) calendar days of receipt of this decision.

Sincerely yours,

James T. Masterson, Chief
Appeals Examining Office

cc: Miss Gladys Anna Holden
5061 New Hampshire Avenue, N. W.
Washington, D. C. 20011

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO
BAR:ka
YOUR REFERENCE

AUG 31 1966

I received this letter
Sept. 6, 1966.

Anna Holden
703 E. 2nd St.
Ocala, Fla.
Sept. 6, 1966

Mr. Paul E. Miller
Attorney at Law
2000 Ninth Street, NW.
Washington, D. C. 20001

Dear Mr. Miller:

Further reference is made to your appeal in behalf of Miss Gladys Anna Holden, from the decision issued by the Commission's Appeals Examining Office under date of May 6, 1966, with respect to the action taken by the Acting Director, Office of Equal Educational Opportunities, Office of Education, Department of Health, Education and Welfare, whereby Miss Holden was terminated from the position of Education Research and Program Specialist (Research Assistant), GS-11, effective January 7, 1966, for failure to qualify during probationary period.

The previous decision of the Commission's Appeals Examining Office denied Miss Holden's initial appeal entered with that office, finding that the circumstances of Miss Holden's termination were not within the purview of appellate review by the Commission, under the provisions of Section 315.806 of the Civil Service Regulations. As a result of your further appeal from the previous decision in this matter, the Board of Appeals and Review has fully considered the complete record which has been developed in Miss Holden's case, including all representations which have been submitted by Miss Holden, by you, and by others in her behalf.

The record establishes that Miss Holden was appointed to the position of Education Research and Program Specialist (Research Assistant), GS-11, effective January 11, 1965, subject to satisfactory completion of a one-year probationary period under the provisions of Section 315.801 of the Civil Service Regulations. The record further shows that by a notice issued to Miss Holden on January 3, 1966, the Acting Director, Office of Equal Educational

Opportunities, advised Miss Holden of the decision to terminate her for failure to qualify during probation, effective January 7, 1966, stating that the reasons for the action were:

1. Your failure to accept direction without resentment and bad grace.
2. Your failure to cooperate with other staff members in gathering information from files assigned to your charge.
3. Your failure to use sound judgment in handling inquiries and proposals assigned to you for staff work.

Under the governing Civil Service Regulations, Section 315.804, the only procedural requirement for termination of a probationary employee, based on unsatisfactory performance or conduct during the period of probation, is issuance of a notice in writing as to why he is being separated in terms of the agency's conclusions as to the inadequacies of his performance or conduct, with notification of the effective date of the termination action. This procedural requirement was met in Miss Holden's case, by the record showing issuance of the advance notice to her on January 3, 1966.

The sole issue presented for decision in Miss Holden's case is whether a basis is shown for concluding that she was terminated because of political discrimination within the meaning of Section 315.806 of the Civil Service Regulations, which provides that a terminated probationary employee may appeal to the Commission only on certain specific grounds, including "...that the action taken was based on political reasons not required by statute...".

Miss Holden's appeal has been advanced on the basis of contentions that the Acting Director, Office of Equal Educational Opportunities, disapproved of staff employees having an active personal involvement with civil rights movements in the community, to an extent such activity was considered to reflect upon their official objectivity as staff members; that Miss Holden actually was terminated because she had continued extensive personal participation in civil rights activities and organizations, particularly by her affiliation with the Congress of Racial Equality; and that such activities and affiliation should be considered political in character, so that her alleged dismissal for such reasons would constitute an act of political discrimination, under the terms of Section 315.806 of the Civil Service Regulations.

In its review of Miss Holden's case, the Board of Appeals and Review considers that the organizational activities and affiliation supporting Miss Holden's complaint of political discrimination may be recognized as engaged in programs seeking to influence the formulation of public policy, and to promote political action, in the area of civil rights. However, the various laws, rules, and regulations for which the Commission has specific enforcement authority, relating to political activity of Federal employees, have the particular and direct objective of insulating the Federal civil service from either reward or reprisal based upon political influences, specifically as resulting from affiliation with or support of recognized partisan political parties, their candidates for public office, or their political campaign activities. It is this specific protection against partisan political discrimination which is provided under the limited authority established by Part 315 of the Civil Service Regulations, governing the Commission's appellate review of agency decisions to terminate probationary employees. As a result of its review of the record developed in Miss Holden's case, the Board of Appeals and Review finds, as did the Appeals Examining Office, that the facts and circumstances which have been alleged do not establish a substantive basis to conclude that Miss Holden's termination may have been "based on political reasons not required by statute", within the meaning and intent of Section 315.806 of the Civil Service Regulations.

The Board of Appeals and Review may not further consider or rule upon the sufficiency of the reasons which were advanced for the action terminating Miss Holden's probationary appointment on January 7, 1966, which is not otherwise subject to appellate review by the Civil Service Commission. Under the circumstances, the previous decision of the Commission's Appeals Examining Office, declining Miss Holden's appeal under the authority of Section 315.806 of the Civil Service Regulations, is hereby affirmed by the Board of Appeals and Review.

For the Commissioners:

Sincerely yours,

William P. Berzak
Acting Chairman, Board of Appeals
and Review

Re case of Gladys Anna Holden

Distribution:

Appeals Examining Office

Miss Gladys Anna Holden
5061 New Hampshire Avenue, NW.
Washington, D. C. 20011

Director, Personnel Branch
Office of Education
Department of Health, Education
and Welfare
Washington, D. C. 20201

Alan E. Jones, Chairman
Ann Arbor Democratic Party
309 Brookside Drive
Ann Arbor, Michigan 48105

Mr. J. Francis Pohlhaus
Counsel
Washington Bureau
National Association for the
Advancement of Colored People
100 Massachusetts Avenue, NW.
Washington, D. C. 20001

Sept. 19. 1966

Nancy
I wrote a
letter on this
for Anne
Braden - can
you find it
NO

Mr. Marvin Rich, Director
CORE Scholarship, Education
and Defense Fund
150 Nassau Street, # 1707
New York, N.Y. 10038

Dear Marvin:

On Aug. 31 the Board of Appeals and Review, the "court of last resort" within the Civil Service Commission, ruled against my appeal. I received their letter denying my appeal on September 6.

My attorney, Mr. Paul E. Miller, who you met at the White House Conference, is now preparing to take the case to court. He has found no statutory time limit for filing suit, but hopes to file within 30 days of the ruling — by the end of the month. He is currently drafting the complaint we will file.

Mr. Miller asked me to check with you regarding S.E.D.'s assistance with legal expenses, which we discussed earlier. He expects the filing fee to be nominal — and hence, within my budget — but is concerned about further costs, such as subpoena fees, the cost of a transcript, and, later on, printing of briefs for appeal. I think what he would like is a letter setting forth S.E.D.'s interest in the case and indicating the kind of expenses you could help with and how he should go about getting the actual expenses covered. His address is Professor of Law, Howard University Law School, Washington. D.C.

In addition, Ralph Temple suggested, and Miller concurs, that it would be extremely valuable to the case to have Carl Rachlin's name listed on the complaint as one of the attorneys "of counsel." Attorney Joan Franklin of the national NAACP staff has reviewed the case and expressed an interest in helping. We hope, if time permits, to try to get her name, or the name of some other legal counsel for NAACP on the complaint. Francis Pohlhaus of the Washington Bureau wrote an excellent letter on my behalf some time back; he is another person we may approach. Miller hopes to finish drafting the complaint this week and will forward it to Rachlin for review. If you have any suggestions along this line, please get in touch with me or with Mr. Miller.

I am also enclosing, along with the last two Civil Service rulings, a Post story on the transfer of Stan Kruger from the enforcement section of the Office of Education's Equal Opportunities Office. Stan was the only area director who actively attempted to enforce this year's guidelines. His transfer was, I hear, ordered by the President. There is no question that it was the direct result of political pressure from Georgia and South Carolina.

I had my operation in New Orleans in June and spent the summer recuperating – the first month with my sister in New Orleans and the next two at my parents' in Florida. I am still not able to do much, but at least the progress is steady. No picketing or demonstrating for a while yet.

Hope to hear from you soon. If you're in D.C. and have time, I'd like to talk to you.

Best wishes,

Sincerely,

Anna Holden

5061 New Hampshire Ave. NW
Washington, D.C. 20011

cc Paul E. Miller

October 4, 1966

Miss Anna Holden
5061 New Hampshire Avenue, N. W.
Washington, D. C. 20011

Dear Anna:

I spoke to Ralph Temple the other day about your case after Marvin also had asked me to check on what was going on. We are, of course, ready to assist you in any way possible including, if you think you want it, the use of my name.

We cannot, sadly, pay any legal fees but we will assist with Court expenses. Obviously, I hope Mr. Miller will advise us before he undertakes any major ones; small ones like filing fees, of course, is another matter.

With warm personal regards.

Sincerely yours,

Carl Rachlin
General Counsel

CR:tp
cc: Marvin Rich

November 15, 1966

Paul Miller, Esq.
2000 9th Street, N.W.
Washington, D.C. 20001

re: Anna Holden

Dear Mr. Miller:

May I take the liberty of inquiring about Anna Holden's case? I just argued a case in the Fifth Circuit concerning the power of the federal court to order a governmental body (the City of Tallahassee) to perform a discretionary act.

If we can help, please let me know.

Sincerely,

Carl Rachlin
General Counsel

CR:ns

Anna
Holden

Nov. 29. 1966

Mr. Carl Rachlin
General Counsel
Scholarship, Education and
Defense Fund for Racial Equality
150 Nassau Street
New York, N.Y. 10038

Dear Carl Rachlin:

Since my last letter to you Mr. Miller has withdrawn as my attorney, under doctors' orders to cut down on his outside activities.

I am now trying to find someone to represent me and the case file is now under review by a lawyer who was at least willing to have a look.

I will keep you posted. I am anxious to move this along, but have no idea how long it will take to get a new lawyer & get him moving.

Sincerely,

Anna Holden

cc Marvin Rich

5061 New Hampshire NW
Washington, D.C. 20011

Carl Rachlin

5061 New Hampshire Av. NW
Washington, D.C.
March 19, 1967

file
Anna
Holden

Mr. Marvin Rich
Scholarship, Education and Legal
Defense Fund for Racial Equality,
150 Nassau Street, # 1707
New York City, N.Y.

Dear Marvin:

I must apologize for remaining out of touch so long. I have intended to write since early January but just haven't made it

First, the National Capital Area Civil Liberties Union voted to support my case at their December board meeting. There was some delay in finding an attorney, but a lawyer named Donald L. Dennison, 932 Munsey Building, Washington (Phone: 347-4239) recently agreed to take the case. He is now reviewing the papers (I hope!). I asked him to write to you and to Carl Rachlin notifying the Fund that he is representing me. Did he? So, here we go again. I hope to get out a mimeoed letter soon to persons interested in the case. So far I just haven't had the energy.

Second, I got a call around Christmas from a Russell Gilmore at the State Historical Society of Wisconsin who asked for my "papers". My friends in the manuscript Division of the Library of Congress got a big kick out of this. Seriously, is it true that national CORE, Marvin Rich, McKissick, Lon Smith and other key CORE notables are forwarding papers? I think it makes sense to place national files in the same place and had heard that Farmer's papers were promised to Boston U or Brandeis. I might some day find the strength to sort out national items that I still have, if this is to be the central depository. Please advise me.

About mid January I went back to the Health and Welfare Council (not HEW) on a followup project on a study of low income D.C. families I worked on when I first came to Washington. This is a short term thing, but it sure is good to have some money coming in, if only temporarily. I somehow drag through each week – still have a low energy level, can't do much besides work + go to bed early. How long, how long? I am having material from the project (CROSS-TELL) sent to you. It's good.

Best wishes,

Anne Holden

✓ cc Carl Rachlin

May 6,
~~April 10,~~ 1967

Dear Carl Rachlin:

A year and three months ago I was fired from the US Office of Education's school desegregation program, the Office of Equal Educational Opportunities. You were among a number of persons and organizations contacted to protest the firing and request reinstatement.

Now, over a year later, I want to thank you for your support and give you a "progress" report on the case.

In spite of wide interest and statements of concern from a variety of sources--co-workers in the Office of Education; professional colleagues; civil rights activists and organizations; clergymen; Congressmen; labor and political organizations; and interested citizens--both the Office of Education and the Department of Health, Education and Welfare refused to hold a hearing on the case, or reverse the initial decision. The case was appealed to the US Civil Service Commission and on August 31, 1966, the Commission issued a final ruling denying my appeal.

I hope to file suit challenging the Civil Service Commission's ruling in the near future. The National Capital Area Civil Liberties Union will furnish an attorney to represent me and the Scholarship, Education and Defense Fund for Racial Equality will also assist with the litigation.

This letter and other efforts to follow up on the firing were hampered by personal health problems. Late last Spring I was hospitalized on an emergency basis and found that I had to have a major operation. The operation took place in June, and, much to my dismay, the recovery period has been quite long. I have still not fully recovered, but improve with each passing month.

In mid-January, after a little more than a calender year of unemployment, I went back to work for the Health and Welfare Council of the National Capital Area, a District-metropolitan agency for which I worked prior to employment with the Office of Education. I am working temporarily on a project called "CROSS-TELL," a follow up on a study of low income families in the District of Columbia with which I worked before going to the Office of Education.

Please forgive the long delay in thanking you for your interest and support. Your concern has been most gratifying. Although enforcement of the Civil Rights Act in the area of education continues to present a dismal picture, the new court ruling from the Fifth Circuit Court of Appeals offers a ray of hope to those of us who believe in school desegregation.

Hoping for ultimate success in my own appeal, I remain,

Sincerely,

Anna Holden

Anna Holden

5061 New Hampshire Ave. NW

He expects to complete a draft of the complaint by about May 12. I will raise the question of SEDF joining the complaint when the draft is completed. Ralph Temple will review the draft for NCACLU. Best wishes.

Anna Holden

**NATIONAL CAPITAL AREA**
**CIVIL LIBERTIES UNION**
AN AFFILIATE OF THE AMERICAN
CIVIL LIBERTIES UNION

SUITE 501
1424 16TH STREET, N.W.,
WASHINGTON, D.C. 20036
483-3830

**RALPH J. TEMPLE,**
LEGAL DIRECTOR

July 14, 1967

Carl Rachlin, Esquire
General Counsel
Scholarship, Education and
Legal Defense Fund for
Racial Equality
150 Nassau Street
New York, New York

Dear Carl:

Enclosed is a draft of a complaint in Anna Holden's case. Anna told me you were interested in supporting her case. Please let me know right away whether you wish your name to appear, as shown, on the complaint.

Also, why not buy me a lunch next time you're in town.

Sincerely,

Ralph

Ralph J. Temple
Legal Director

cc: Miss Anna Holden

NATIONAL CAPITAL AREA
CIVIL LIBERTIES DEFENSE
AND EDUCATION FUND
1424 - 16th STREET, N. W. SUITE 501
WASHINGTON, D. C. 20036

January 11, 1968

John Kramer, Esquire
Shea & Gardner
734 - 15th Street, N. W.
Washington, D. C. 20005

Re: __Holden v. Gardner__

Dear John:

Thank you for agreeing to take this case over since Armand Derfner has gone to Mississippi.

Unfortunately, there has been a good deal of delay in getting this suit going. Anna was fired in January, 1966, and the final Civil Service Commission ruling that she was not entitled even to a hearing came in August, 1966. The complaint was filed in District Court on November 9, 1967. At this point, within the limits of your own schedule, we would like to push the suit as fast as possible.

It should be a great case, and it should establish some good precedents. In addition, you will find in the comprehensive file on the case an amazing base of nation-wide support for Anna herself. Many letters from highly reputable persons in the civil rights and liberal communities were sent to HEW as a result of Anna's firing.

It will take a good deal of work to pull together the people who are now spread around the country, but somehow, through depositions, affidavits, etc., we should be able to build quite a case showing that Anna was an exemplary employee and was fired because of her views and because of her intra-office protests against foot-dragging on school desegregation.

After you have reviewed the file and spoken to Anna, you might want to call Carl Rachlin in New York just to touch base since, as I told you, his outfit, the SDEF, is financing the litigation. You can reach Armand Derfner in Jackson, Mississippi (601-948-4191). Perhaps one of your first moves should be to file a notice of appearance in the District Court so that you will be served with papers.

The Government's answer was due January 9th, i.e., yesterday. At some point soon the Government will probably file a motion to dismiss or a motion for summary judgment. If they do not, we should file a motion for summary judgment. However, before any such motions come to hearing, we will want to engage in discovery, and, as I told you, the first step will be to go up to New York and take Dave Seeley's deposition. After going through the file and conferring with Anna you will have an idea of what further discovery you will need.

If you need any legal assistance, let me know, and I will line up one or more volunteer lawyers or law students to work with you on this case.

Thanks again.

Sincerely yours,

Ralph J. Temple

cc: Miss Anna Holden
Armand Derfner, Esquire
Carl Rachlin, Esquire
Miss Joan Franklin

SHEA & GARDNER
734 FIFTEENTH STREET, N. W.
WASHINGTON, D. C. 20005

FRANCIS M. SHEA
WARNER W. GARDNER
LAWRENCE J. LATTO
ALFRED L. SCANLAN
RICHARD T. CONWAY
WILLIAM H. DEMPSEY, JR.
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.

MARTIN J. FLYNN
JAMES B. GOODBODY
DAVID BOOTH BEERS
DAVID W. MILLER
JOHN R. KRAMER
RICHARD M. SHARP
ANTHONY A. LAPHAM

REPUBLIC 7-1255

May 15, 1968

Carl Rachlin, Esq.
General Counsel
Scholarship, Eduation and Defense Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Re: Holden v. Cohen

Dear Carl:

I am enclosing a certified proof of service of this notice to take deposition that you will need in order to obtain the subpoena for Dave Seeley under Rule 45 ~~DI~~ (d)(1) of the Federal Rules of Civil Procedure. Dave doesn't have any papers, unless he stole them when he left HEW, so a subpoena duces is a waste of time.

As things stand now, the 28th looks perfect to me. I will try to get you a brief ~~and a~~ (?) memo on the facts of the case, particularly those about which Mr. Seeley should be able to tell us more.

Sincerely yours,

John R. Kramer

(Sorry about the mess, but my girls are all pregnant)

JRK/csb

Encls.

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE UNITED STATES ATTORNEY

WASHINGTON, D.C. 20001

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3136-C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW.

May 16, 1968

IN REPLY, PLEASE REFER TO
INITIALS AND NUMBER
DGB:GZ:1jw

Cl. 42021 C

John R. Kramer, Esquire
Shea and Gardner
734 15th Street, N.W.
Washington, D.C.

Re: Gladys Anna Holden v. John Gardner and John W.
Macy Jr. Civil Service Commission, et al.
Civil Action No. 2889-67

Dear Mr. Kramer:

Enclosed is the "service" copy of the "Motion for Protective Order" we are filing today to stay the taking of David Seeley's deposition in New York City which you have noticed for May 28, 1968, pending disposition by the Court of the motion for summary judgment we plan to file in this case.

We assume that you will cancel your preparations for taking this deposition, pending the Court's ruling on our Motion for Protective Order.

An information copy of this letter is being sent to Mr. Seeley.

Very truly yours,

DAVID G. BRESS
United States Attorney

By: J.M. Hannon
JOSEPH M. HANNON
Chief, Civil Division

Enclosures

cc: David Seeley
New York City Human Resources Administration
100 Church Street
New York, New York

SHEA & GARDNER
734 FIFTEENTH STREET, N. W.
WASHINGTON, D. C. 20005

FRANCIS M. SHEA
WARNER W. GARDNER
LAWRENCE J. LATTO
ALFRED L. SCANLAN
RICHARD T. CONWAY
WILLIAM H. DEMPSEY, JR.
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.

MARTIN J. FLYNN
DAVID BOOTH BEERS
DAVID W. MILLER
JOHN R. KRAMER
RICHARD M. SHARP
ANTHONY A. LAPHAM

REPUBLIC 7-1255

May 24, 1968

Carl Rachlin, Esq.
General Counsel
Scholarship, Education and Defense Fund for
Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Re: Holden v. Cohen

Dear Carl:

Enclosed please find a copy of the enemy's Motion for Protective Order and my response. I got a little nasty in it, but I think the situation called for it. Anna has been notified and is somewhat impatient. So am I. I will let you know as soon as the court gets off its behind and decides the damn thing.

Sincerely,

John R. Kramer

JRK/bh
Enclosures

Holden

SHEA & GARDNER
734 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

FRANCIS M. SHEA
WARNER W. GARDNER
LAWRENCE J. LATTO
ALFRED L. SCANLAN
RICHARD T. CONWAY
WILLIAM H. DEMPSEY, JR.
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.

MARTIN J. FLYNN
DAVID BOOTH BEERS
DAVID W. MILLER
JOHN R. KRAMER
RICHARD M. SHARP
ANTHONY A. LAPHAM

REPUBLIC 7-1255

June 10, 1968

Carl Rachlin, Esq.
General Counsel
Scholarship, Education and Defense Fund
for Racial Equality
150 Nassau Street
New York City, New York 10038

Re: Holden v. Cohen

Dear Carl:

Enclosed please find a copy of the Recommendation of Pretrial Examiner entered after the oral argument last Friday. We lost part of what we wanted because she felt that the whole matter would be disposed of on motion for summary judgment. But the Government has to file that motion by August 19 or else we get to take Dave's disposition. I will, therefore, not bombard you with any more letters until I get hold of the Government's motion in August. Have a nice summer.

Sincerely yours,

John R. Kramer

JRK/bh
Enclosure

Georgia

July 21,1968

Carl Rachlin, Esq.
General Counsel
SEDFRE
164 Madison Avenue
New York, N.Y. 10016

Dear Carl,

What is happening with Georgia v. Cohen and our intervention? As you know, I continue to worry about undue delay. Please don't get hung up with the Simpson firm.

Call or send me a copy of the petition if already filed. (Phone number here is 914-679-8189).

Best regards,
Ed
Edward V. Sparer

P.S. How come LeClerc has men on the client list? Possibly they are on AFDC because of disability, but the best clients- most relevant to our allegations- are those who fall in the absent parent category.

Our letter
crossed in
mail

Date: February 5, 1966

Subject: Firing of Anna Holden from U. S. Office of Education, Office of Equal Educational Opportunities

1. Circumstances of Firing

Dismissal Letter. On Jan. 3, 1966, Miss Anna Holden, Education Research and Program Specialist, GS-11, Office of Equal Educational Opportunities, U. S. Office of Education, Department of Health, Education and Welfare, Washington, D. C., was handed a letter stating she would be separated from her job Jan. 7, 1966 "for failure to qualify during probation." Miss Holden began work for OEEO Jan. 11, 1965 under a "career conditional" appointment with a standard probation of one year.

The dismissal letter, signed by David Seeley, Acting Director, OEEO and dated Dec. 28, 1965, gave the following reasons for dismissal: (1) "failure to accept direction without resentment and bad grace; (2) "failure to cooperate with other staff members in gathering information from files assigned to [her] charge; and (3) "failure to use sound judgement in handling inquiries and proposals assigned to [her] for staff work."

Lack of Early Warning. Miss Holden was first warned of pending dismissal Dec. 21, 1965 on the eve of a 12-day Christmas leave. Mr. Seeley then told her that, despite her "competence," which competence was currently needed by OEEO, he would recommend termination of her appointment because (1) "personality problems" prevented her from working cooperatively with the staff; and (2) her strong, personal position and "inflexibility" on civil rights interfered with "objectivity" in her work.

Mr. Seeley also stated on Dec. 21 that he did not know what action the Personnel Department would take on his recommendation or when the action would be taken; he indicated his personal desire that she stay with OEEO "up to five more months."

Violation of Civil Service Commission Regulations. Mr. Seeley's recommendation to Personnel on Miss Holden's separation was filed Dec. 23, 1965, contrary to Civil Service Commission regulations which require that such recommendations be certified at the beginning of the 9th month of probation (Sept. 11 in this case) but no later than the end of the 10th month (Nov. 10).

No Discussion of Work Evaluation. Prior to Dec. 21, no official or unofficial evaluation of Miss Holden's work was discussed with her or shown to her. The Research and Materials Branch in which she worked had no functioning head or supervisor 8 of the 12 months of her employment, including the past 6 months. Since Jan. 3, the Personnel Office of the Office of Education has refused to show Miss Holden any evaluations of her work.

Staff Support. On Jan. 7, 1966, 19 OEEO professional staff members, including 3/4 of the professional staff of the Technical

Assistance Section in which the Research and Materials Branch is located, signed a petition and letters supporting Miss Holden and expressing concern over her treatment. (The text of the petition is attached.) Many of these staff members are also on probation as career conditional appointees and fear similar treatment.

Civil Rights Stand Real Basis. A personnel memo dated Dec. 23, 1965 and signed by Mr. Seeley included the statement that Miss Holden displayed "A lack of objectivity and a tendency to allow her emotional reactions on matters affecting civil rights to cloud sound judgement..." This portion of the memo was deleted from the final letter of dismissal.

### 2. Present Status of Case

Early Appeals Denied. Miss Holden's dismissal became effective Jan. 7, despite efforts by Washington CORE and others to have the action withdrawn. CORE picketed HEW on Jan. 7 in protest.

On Jan. 10, the HEW Personnel Director turned down a Jan. 7 appeal "for review and a hearing" and also denied Miss Holden's request for "all particulars in writing which constitute the factual basis of termination."

Petition to HEW and Civil Service Commission. On Jan. 17, Miss Holden filed a sworn affidavit and petition with HEW and the Civil Service Commission stating that her dismissal is based on her beliefs and activities in support of the constitutional rights of citizens, "which involvement is within the purview of the function of the Office of Equal Educational Opportunities, and, further, ... is an entirely improper ground for discharge."

The petition, turned down by HEW on Feb. 1, also charges that the dismissal violates (1) Civil Service Commission regulations governing probationary career conditional appointees; (2) the HEW Personnel Guide for Supervisors with respect to evaluation and supervision of employees; (3) Civil Service Commission regulations that "No action against a probationer may be based on political discrimination"; (4) HEW and federal policy forbidding discrimination by race or creed; and (5) the 1st Amendment and the Due Process Clause of the 5th Amendment of the U. S. Constitution.

Civil Service Commission Appeal Pending. The Civil Service Commission has not yet acted on this petition and appeal. Mr. Paul Miller, Howard University Law School, is representing Miss Holden on behalf of Washington CORE.

### 3. Relationship of Holden Case to OEEO Program

Miss Holden's dismissal appears to be related to a general deterioration of the school desegregation program and a "tightening up" on staff committed to maximum use of the Civil Rights Act and official agency policy to desegregate the schools.

Name: Anna Holden (Miss) January 1, 1
Address: 5061 New Hampshire Ave. NW, Washington, D. C.
Phone: 726-0059
Age: 37 Place of birth: Ocala, Florida

## Educational Background

Ocala High School, Ocala, Fla. 1942-1946. College preparatory cours

Florida State University, Tallahassee, Fla. 1946-1950. A. B., March, 1950. Undergraduate major, social sciences with concentration in sociology; second major, journalism. 1 quarter graduate work in sociology, Spring, 1950.

University of North Carolina, Chapel Hill, N. C. 1950-1951; Summer, 1954. M. A., 1955. Major, sociology; minor, anthropology.

University of Michigan, Ann Arbor, Mich. 1959-1960. One year, Ph. D. program in sociology.

## Work Experience

Education Research and Program Specialist, Office of Equal Educational Opportunities, U. S. Office of Education, Washington, D. C. Jan., 1965-Jan., 1966. Assigned to Technical Assistance Section, Research and Materials Branch. Major responsibilities included development of a reference library, selection of materials for distribution, research and reference work for OEEO staff, public school personnel and government agencies concerned with school desegregation and the educational problems occasioned by school desegregation.

Project Associate, Child-Rearing Study, Health and Welfare Council of the National Capital Area, Washington, D. C. 1963-1964. Analysis of neighborhood and community data gathered in a 5-year study of family life among low-income families in the District of Columbia; editing of field materials and staff reports. The study was funded under a grant from the National Institute for Mental Health.

Editorial Assistant, Flint Youth Study, Institute for Social Research, University of Michigan, Ann Arbor, Mich. 1960-1963. Analysis of data and editorial assistance in the preparation of a series of reports growing out of a 6-year study of juvenile delinquency conducted by ISR in Flint, Mich. The study was funded by the National Institute of Mental Health.

Teaching Fellow, Department of Sociology, University of Michigan, Ann Arbor, Mich. 1959-1960. Taught course, "Marriage," for undergraduates not majoring in sociology.

Research Associate, Race Relations Department, Fisk University, Nashville, Tenn. Summer, 1958-Summer, 1959. Supervision of data processing, data analysis and editing of reports for publication.

Research Associate, Department of Social Sciences, Fisk University, Nashville, Tenn. 1955-1958. Field studies of three community desegregation crises--bus boycott, Montgomery, Ala.; school desegregation crises, Clinton, Tenn. and Little Rock, Ark. Teaching Assistant for undergraduate sociology course, "Methods of Social Research."

Interviewer, part-time, with market research companies, Institute for Motivational Research, Croton-on-Hudson, N. Y.; Center for Research in Marketing, N. Y.; and Alfred Politz Research, N. Y. 1956-1958.

Research and Information Assistant, Southern Regional Council, Atlanta, Ga. 1951-1955. Mail surveys, research and reference work evaluating and documenting the status of race relations in a variety of areas; preparation of material for speeches, publications and programs; field work with the Council's community self-survey project.

Graduate Research Assistant, Department of Sociology, University of North Carolina, Chapel Hill, N. C. 1950-1951. Documentary research on the history of the Indians of Robeson County, N. C.; part of a study exploring relationships between Indians, whites and Negroes in a Southern community with a pattern of three-way segregation.

## Professional Affiliations

American Sociological Association, National Association of Intergroup Relations Officials, District of Columbia Sociological Society

## Academic Honors and Honorary Societies

Degree, Florida State University, cum laude; Phi Beta Kappa, Phi Kappa Phi, Alpha Lamba Delta (freshman women), Phi Alpha Theta (History) and Alpha Kappa Delta (sociology).

## Publications

(with George S. Mitchell) "Money Income of Negroes in the United States," Journal of Negro Education, v. 22 (Summer, 1953), 333-342

"Negro Family Income in the Southern States," New South, Oct.-Nov., 1953

"The Color Line in Southern Libraries," New South, January, 1954

"State Parks for Negroes--New Tests of Equality," New South, April-May, 1954

(with Preston and Bonita Valien) "Clinton, Tenn.: School Desegregation Crisis." Anti-Defamation League of B'nai B'rith, 515 Madison Ave., New York 22, N. Y. 1957

"A First Step Toward School Integration." Congress of Racial Equality, 38 Park Row, New York 38, N. Y. June, 1958

(Ed.) "Human Relations and the Moral Challenge. A Condensation of Presentations at the 15th Annual Institute of Race Relations, Fisk University, June 30-July 12, 1958." Race Relations Department, Fisk University, Nashville 8, Tenn. 1959

(Ed.) "Case Histories, Study of the Impact of Boys' First Contact with the Court." Institute for Social Research, University of Michigan, Ann Arbor, Mich. 1961. 28pp.

"A Call to Catholics," Interracial Review, v. 35 (June, 1962), 140-143

(with Kenneth Neubeck) "School Desegregation: Changing Policies and Practices." U. S. Office of Education, Department of Health, Education and Welfare, Washington, D. C. Sept., 1965. 26pp.

## Reports

"Leadership in Little Rock: White Leadership and the School Desegregation Crisis." A preliminary report based on analysis of interviews conducted in April and May, 1958 as part of a larger study of the school desegregation crisis sponsored by the Anti-Defamation League of B'nai B'rith and the National Council of Churches. 1958. Unpublished manuscript.

(with Ronald Lippitt and Stephen Withey) (tentative title) The Apprehended Delinquent in Flint, Michigan: Chapter 2, "Juvenile Offenders Apprehended by the Police;" Chapter 3, "The Juvenile Repeater;" Chapter 4, "The First Serious Apprehension and Its Impact;" Chapter 5, "Explorations of the Impact of Differential Social Settings and Patterns of Acquaintance." Flint Youth Study, Institute for Social Research, University of Michigan, Ann Arbor, Mich. 1961-1963. Unpublished manuscripts.

(Ed.) (with Charles Seashore), chapter for proposed monograph, "Conscience Development and Internalization of Norms Among Adolescent Boys." Flint Youth Study, Institute for Social Research, University of Michigan, Ann Arbor, Mich. 1963. Unpublished manuscript.

"Low Income Parents Attitudes toward Their Neighborhood." Child-Rearing Study, Health and Welfare Council of the National Capital Area, Washington, D. C. April, 1964. Unpublished manuscript. 52pp.

"Low Income Parents Accommodation to the Neighborhood." Child-Rearing Study, Health and Welfare Council of the National Capital Area, Washington, D. C. 1964. Unpublished Manuscript. 81pp.

(Ed.) Field reports from a participant observation study by Roscoe Lewis conducted in a low income Negro neighborhood in central Washington. Child-Rearing Study, Health and Welfare Council of the National Capital Area, Washington, D. C. 1964

"Positive Action in the White Community." An analysis of organizational and individual attempts to gain support for, and resolve community tensions surrounding the Montgomery bus protest. Presented to the Race Relations Institute, Fisk University, July, 1956, as part of a panel report by the Fisk Social Science Department on their study of the Montgomery bus boycott.

## Volunteer Activity in Civil Rights

Washington, D. C. Chapter, Congress of Racial Equality (CORE). Member, 1963 to present. Chairman, Housing Committee. CORE representative, Ad Hoc Committee on the Housing Crisis (a federation of local organizations attempting to expand the quantity of decent, habitable housing for low income families) ; active in current campaign to amend the D. C. fair housing law being carried out by a coalition of 12 civil rights, fair housing and civic groups.

Ann Arbor, Mich. Congress of Racial Equality (CORE). Member, 1960-1963. Chairman, 1961-1962. Sympathy support for Southern sit-in Movement; local campaigns in public accommodations and fair housing, including community-wide campaign to obtain fair housing law.

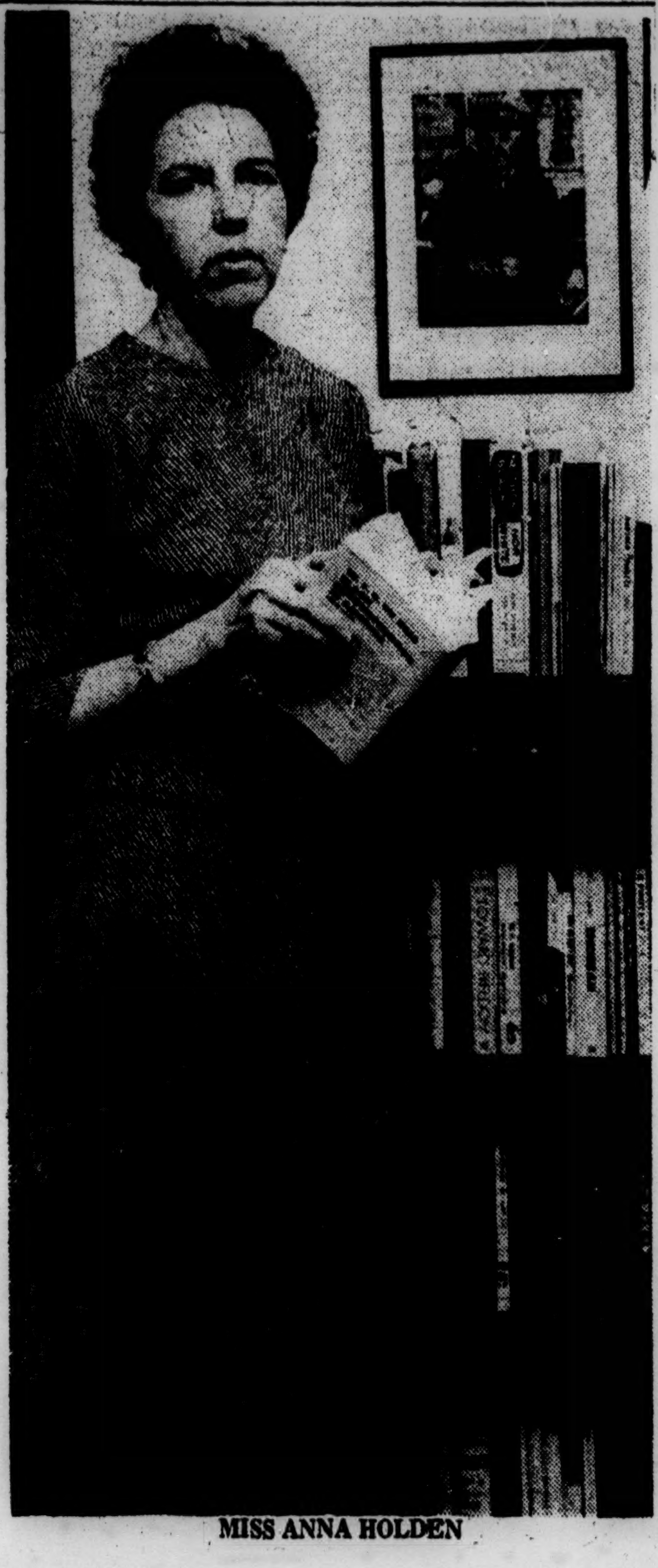
Ann Arbor Area Fair Housing Association. Organizer, Corresponding Secretary, 1961-1963.

Nashville, Tenn. Committee on Racial Equality (CORE). Member, 1956-1959. Chairman, 1957-1959. Active in efforts to obtain rapid, effective desegregation of schools, following initial court decision obtained by NAACP branch.

Congress of Racial Equality (CORE). Secretary, National CORE, 1957-1962; Midwest Regional Representative to CORE National Action Council,1963.

Recipient, Achievement Award, Young Democratic Clubs of Michigan, May 6, 1961, "...for your outstanding contribution toward better government; for your unequivocal stand in the struggle to achieve equal rights for all citizens; for exemplary leadership in community affairs; and most of all, for inspiring young people to implement their idealism."

THE WASHINGTON AFRO-AMERICAN, JANUARY 15, 1966



MISS ANNA HOLDEN

# Claims rights work caused her firing

By MARY STRATFORD

An appeal by Miss Anna Holden from her dismissal from the Office of Equal Education Opportunities, U. S. Office of Education, has been turned down by the parent agency, the Department of Health, Education and Welfare (HEW).

**Miss Holden, who believes her civil rights activities led to her termination from the post as an education and program specialist, said she plans further appeals.**

* * *

THE CONTROVERSIAL dismissal which has stirred protests from several organizations and individuals was upheld by HEW in a letter received by Miss Holden Tuesday stating her "notice of termination fully complied with the requirements of the Civil Service Commission."

Miss Holden had requested a review and hearing and asked to be given the particulars of the reasons for her dismissal from the GS-11 post.

* * *

IN HIS letter recommending Miss Holden's dismissal, David Seeley, acting director of the Office of Equal Educational Opportunities, gave as reasons her failure to cooperate with other staff members in gathering information from the files assigned to her and her failure to use sound judgment in handling inquiries and proposals assigned to her for staff work.

**He also stated she has a tendency to allow her emotional reaction on matters affecting civil rights to cloud her judgment in answering inquiries or proposals assigned to her.**

Refuting the "failure to cooperate" charge, three - fourths of Miss Holden's coworkers at HEW signed a petition supporting her.

"Each of us knows her, either personally or by reputation, to be cooperative and obective in gathering information for members of the staff and for educators with whom the staff has put her in contact.

"Indeed, she has often worked long into the evening on her own time to fill urgent requests for information. The library which she has developed has been invaluable to many of us in the pursuit of our professional duties."

* *

TWO RELIGIOUS leaders spoke in support of Miss Holden. Father Samuel K. Frazier

(Continued on Page [illegible])

## –Miss Holden

(Continued from Page 1)

said "It is of growing concern that laws, official government statements and policies are now 'pro civil rights,' but the people who are most qualified to carry them out are too often kept out or pushed aside."

**The Rev. Channing Philips, pastor, Lincoln Temple, United Church of Christ stated he is troubled by "the incongruity of an ageny charged with responsibility to enforce the specifics of a civil rights law not wishing to employ staff who attempt to perform their duties in a positive manner."**

Washington CORE members demonstrated at the agency last Friday in protest against the firing. Miss Holden is chairman of CORE's housing committee.

Other agencies which have supported her include the American Civil Liberties Union, Americans for Democratic Action, the United Auto Workers, Ann Arbor CORE and Ann Arbor Democratic Party.

Miss Holden is a former national secretary of CORE, and former midwest regional representative for the CORE National Action Council. She was chairman of the Ann Arbor, Mich. CORE for two years and was also chairman of the Nashville Tenn. CORE.

She received her B.A. degree in sociology from Florida State University, her M.A.

Washington Afro-American
JANUARY 15, 1966

# Miss Holden's Firing

There is a note of irony in the firing of Miss Ann Holden from her job with the Office of Equal Educational Opportunities, because, as her supervisors noted among their other reasons for releasing her, she had a tendency to allow her "emotional reactions" over civil rights, to cloud her judgement.

How strange it is indeed that an office — whose very name would indicate its concern in this area — would release an employee because that employee is too concerned. Strange indeed are the ways of government.

The treatment meted out to Miss Holden forces us to ask the question —what type of employee does the office want? Should the employee be anti - civil rights, or should he just not care about the issue one way or the other? Whatever the answer, it is clear that Miss Holden, a veteran of the civil rights wars, did not fit into the scheme of things.

The betrayal of this type of attitude on the part of the administrators of the office, is reason to pause and wonder aloud whether the powers that rule it are for the cause, or against it.

If they are for what is right and just, they have a very odd way of showing this. Miss Holden's firing might have been justified on other grounds — which is a question we are not prepared to discuss — but to drag in her involvement with the rights issue as a justification, raises doubt about the office's sincerity, and its ability to recognize a paramount fact—that bringing about equality does require "involved" people, and the more "involved," the quicker will come equality.

The office blundered badly in firing Miss Holden and accusing her of being too emotional about civil rights. Little can be expected from an agency with such a narrow-minded attitude.

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JET, v.29, No. 16, Jan. 27, 1966, p11

### White Rights Advocate Fired From HEW Post

Civil rights and civil liberties organizations are protesting the firing of a former CORE representative from the Health, Education and Welfare Dept.'s Equal Educational Opportunity (EEO) program. Anna Holden, 37, a white educational research and program specialist, lost her $9,000-a-year job despite high professional qualifications and experience because of her "lack of objectivity and emotional reactions on matters affecting civil rights," according to David Seeley, acting director of the EEO. HEW officially said that Miss Holden was fired for "inadequate performance of duties assigned to her," but her competence was strongly defended in a petition by other staff workers. Miss Holden claims that her dismissal is part of a HEW attempt to suppress people with active concern about civil rights, noticeable in the department ever since the "Chicago incident" when federal funds were temporarily withheld from the Chicago school system.

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Washington Post
January 11, 1966

# 'Cynicism' Is Denied By Seeley

David S. Seeley, acting director of the Office of Equal Education Opportunity, denied yesterday a charge of "cynicism" about integration.

"I'm sure I never expressed cynicism about integration or I would not be working for it," he said, He noted that as an undergraduate at Yale he was president of the college NAACP chapter and that he has consistently advocated racial justice.

The charge arose from Seeley's dismissal of Anna Holden, a former national secretary of CORE, for "letting her emotional reactions on matters affecting civil rights cloud sound judgment."

The charge was made by the Rev. Channing E. Phillips, minister of Lincoln Temple United Church of Christ, at a press conference also conducted by the Rev. Samuel K. Frazier, associate vicar of St. Philip's Episcopal Church.

Mr. Phillips said that Seeley, in a panel talk at Plymouth Congregational Church a year ago, "publicly expressed cynicism about the ability of integration to work in the United States."

The minister, who heard the talk, added, "You begin to question the ability of an agency to enforce civil rights laws when the director of that agency is cynical about the workability of integration and fires those workers who pursue it positively."

Seeley recalled that his talk was on the importance of integration and that he said "it would be a tough struggle and there were many forces working against it."

The following petition was presented to David S. Seeley, Acting Director, Office of Equal Educational Opportunities, U. S. Office of Education, January 7, 1966 by members of the OEEO staff.

Nineteen members of the professional staff of OEEO, some of them also probationary appointees, signed the petition or submitted personal, written statements of concern and support for Miss Holden's case.

The signers of the petition include 3/4 of the professional staff members assigned to the Title IV section of OEEO(the technical assistance section), the division to which Miss Holden was assigned.

"Dear Mr. Seeley:

"We have learned that Miss Anna Holden will be dismissed from the staff of the Office of Equal Educational Opportunities on January 7, 1966 because of her failure to cooperate with other staff members in gathering information from the files assigned to her charge and her failure to use sound judgment in handling inquiries and proposals assigned to her for staff work.

"As staff members of OEEO, we would like to express our support for Miss Holden. Each of us knows her, either personally or by reputation, to be most cooperative and objective in gathering information for members of the staff and for educators with whom the staff has put her in contact. Indeed, she has often worked long into the evening on her own time to fill urgent requests for information. The library which she has developed has been invaluable to many of us in the pursuit of our professional duties.

"Not only have we known Miss Holden to be most cooperative in working with us, but we feel that she is one of the most knowledgeable people in the entire country on research materials related to school desegregation. We think it would be exceedingly difficult to find someone to replace her who has her degree of knowledge and personal commitment in the area of civil rights.

"We feel that you would want to know the feelings of respect and gratitude we have for Anna Holden who has made such an important contribution to our work."

Atlanta Journal
Aug. 5, 1966

# GUIDELINE AIDE'S TRANSFER ASKED

By LORRAINE MARTIN

A group of Georgia school officials have demanded the transfer of a civil rights compliance officer to another area after he wrote what they termed a "lethal letter" indicating that Fulton County had not complied with 1966 desegregation guidelines.

U.S. Education Commissioner Harold Howe has not said whether he would transfer W. Stanley Kruger, director of the equal education opportunity program in Georgia, out of the area which includes Georgia, Florida and South Carolina.

"What touched off our visit to Washington," Fulton County School Supt. Paul West revealed, "was a lethal letter—I know of no other word to call it."

**THE LETTER** said the number of Negroes enrolled in previously all-white schools falls "substantially short of that expected in eliminating the dual school system," according to Mr. West.

"Kruger's words that the (Fulton County) system had not done its part are considered a stinging rebuke and a complete distortion of facts," Mr. West said.

"Under the schedule of desegregation, we were to have eight grades opened to Negro students. The board voluntarily increased this to 12," Mr. West said.

He said also that an interpretation of the guidelines provided a 30-day freedom of choice period for students to choose their schools for the coming year.

"The board of education felt this was inadequate," Mr. West stated. "They voted to extend it to the opening day of school, Aug. 29, in an effort to be perfectly fair."

He said this action "completely refutes Mr. Kruger's implication that intimidation is being used locally to keep down requests for transfer."

**MR. WEST** explained that Georgia school officials went to Washington in early April to talk with Commissioner Howe to assure that plans for desegregation of schools was in thorough accord with the guidelines.

"There was no desire on the part of Fulton County Board of Education to any evasion of the law. It's the law of the land and we expect to abide by it."

He said statements coming from representatives of the Office of Education are characterized by "ambiguity, inarticulation and gross confusion."

"Our two senators from Georgia are solidly with us in our protest against Mr. Kruger and his vicious efforts to disrupt normal and intelligent desegregation programs," Mr. West said.

The Georgia officials asked the commissioner to transfer Mr. Kruger "out of this area."

"His negative attitude has engendered the disrespect and hatred of every public school individual who has had to work with him," Mr. West declared.

"We have the deepest respect for the commissioner and we sympathize with him that some of his associates are so highly confused," Mr. West said.

**HE ADDED** that the April visit to Washington revealed that Georgia was supposed to have three times as many schools desegregated by May.

"We have 183 Negroes approved for attendance. That's an increase of 1,216 per cent," Mr. West declared. "Then we get this lethal letter."

Mr. West described Mr. Kruger as a "negative character used as a hatchet man."

The demand for Mr. Kruger's transfer came after the letter, from the civil rights officer, which cast doubt on whether the Fulton County system is qualified for federal funds under 1966 desegregation guidelines.

Mr. West said Mr. Kruger had suggested the board hold community meetings to impress upon parents the desirability of requesting transfers for their children.

The superintendent said Commissioner Howe assured the Georgia officials they would not receive any more letters of similar nature from Mr. Kruger, but the commissioner said Mr. Kruger's letter could be interpreted in several different ways.

"I told him 20 lay leaders, a senator and five congressmen including Mr. Weltner of the 5th District had seen the letter, and they all saw only one way to interpret it." Mr. West said.

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9/9/66 - Post

# Official Active in School Desegregation Is Shifted

An official who has been the target of criticism for his tough enforcement of school desegregation guidelines in three Southern States was transferred yesterday as part of a reorganization of a branch of the U.S. Office of Education.

Stanley Kruger, the official, had been in charge of the compliance effort in South Carolina, Georgia and Florida.

Education Commissioner Harold Howe II announced Kruger's transfer along with the appointment of five other officials in the Office of Equal Educational Opportunities.

Kruger will head a new unit charged with dispensing grants to aid school integration. His permanent replacement has not been named.

There had been a number of complaints about Kruger voiced by members of the South Carolina and Georgia congressional delegations.

Sources at the education agency said Kruger was a "conscientious worker" who took the stand that "the law meant what it said" about desegregation.

Other steps announced by Howe included a shift of compliance officers to field offices and a number of appointments designed to strengthen the administration and operation of the desegregation branch. Among them:

- Harold B. Williams, former executive secretary of the NAACP in Cleveland, takes the No. 2 spot as deputy to Assistant Commissioner David S. Seeley.
- Joshua B. Zatman, recently director of public information at the University of Maryland, becomes chief press aide.
- Robert L. Brown, formerly a senior management analyst at the Commerce Department, was designated "a high-level program manager to strengthen internal policy execution."

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The State
Columbia, S.C.
Aug. 6, 1966

# Education Teams Reviewing S.C. School Desegregation

The manner in which South Carolina school districts are complying with federal desegregation requirements is being reviewed by three U.S. Office of Education teams.

One team is reviewing Charleston District No. 23 and in Williamsburg and Berkeley counties.

Another is at work in Dillon, Chesterfield, Lancaster and Cherokee counties.

And still another is to begin work Monday in Florence, Marion and Horry counties.

State Superintendent of Education Jesse T. Anderson has protested to assistant equal education commissioner David Seeley the use of inexperienced investigators.

He said in the past inexperienced investigators have only compounded the problems of desegregation.

Meanwhile, Washington was a core of activity for persons concerned with the South's desegregation progress.

State Atty. Gen. Daniel R. McLeod is in the nation's capital to try to get legal clarification on some aspects of the desegregation guidelines.

Several Georgia educators have appeared in Washington to request that W. Stanley Kruger, chief civil rights officer for South Carolina, Georgia and Florida be removed from his duties. They contend he has been "disruptive" in the areas he serves.

School districts in Marlboro and Georgetown counties have been summoned to a hearing in Washington to determine if they should lose federal aid for failure to sign compliance forms involving faculty desegregation.

The State
Columbia, S.C.

# Group Demands Official's Transfer

**By LEE BANDY**
**Washington Bureau**

WASHINGTON — An angry group of Dixie school officials Thursday demanded that U. S. Education Commissioner Harold Howe transfer his chief civil rights officer in South Carolina, Georgia and Florida.

The educators—all from the Peach State—described W. Stanley Kruger as "the hatchet man" for the Office of Education.

**They said the equal education opportunity director for the three Deep South states has been "disruptive" in the areas he covers.**

Fulton County School Superintendent Paul West of Atlanta claimed he was expressing the sentiments of all other educators throughout the three-state complex.

Kruger has been quite active in South Carolina, where only five of the state's 108 school districts have submitted satisfactory plans for faculty desegregation.

**He earlier reported that 12 districts had satisfactory plans, but it turned out that seven of them were areas which had not yet reported.**

Six additional Palmetto State districts, operating under court order, are faced with a suit to force them to comply with the new stronger guidelines.

Attorney General Daniel McLeod reportedly was here Thursday investigating the guidelines situation to see what might be done about it.

Speculation is he is laying the ground work for a possible suit.

**McLeod, who could not be reached, was accompanied by Robert Alexander of Gov. Robert McNair's office, a source said. They apparently returned to South Carolina immediately upon completing their business here.**

It is not known whether they met with the Georgia educators.

Most of the opposition to Kruger seems to stem from the fact he has questioned many of the popular free-choice plans throughout the Deep South states.

He contends they're not bringing about desegregation fast enough.

Howe assured the Georgians he would review the Kruger situation.

## McLeod Meets U.S. Officials

Attorney General Daniel R. Mceod was in Washington Thursday on instructions of Gov. Robert E. McNair to meet with officials in the U.S. Office of Education.

The purpose of the meeting was to attempt to get clarification as to how they justify the requirements of the guidelines issued for school desegregation with the Civil Rights Act itself, according to the governor's press secretary, Bob Hickman.

Accompanying McLeod was Robert Alexander, federal coordinator for the governor's office.

McLeod said in Washington only that he discussed a variety of problems with F. Peter Libassi, an assistant to Secretary John Gardner of the Department of Health, Education and Welfare. Libassi is an assistant for civil rights matters.

Gov. McNair said last week that the attorney general's office would make its services available to any school district that wanted to bring court against the guidelines in the event of loss of federal funds.

The Chester County school board has notified Office of Education officials it may go to court if its freedom of choice action against the guidelines in the event of loss of federal funds.

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Atlanta Daily World
Aug. 6, 1966

# Southerners Accused Of Slow Pace, Attack Compliance Head

The superintendent of the Fulton County school system said Friday he has demanded the ouster of W. Stanley Kruger who is in charge of school desegregation compliance for the UMS, Office of Education in Georgia, South Carolina and Florida.

Paul West said he and two other Georgia educators conferred with Harold Howe II, education commissioner, and Kruger Thursday in Washington.

"His name is anathama to every school superintendent in Georgia and 98 per cent of the school board members," West said he told Howe in discussing Kruger.

"He is dictatorial, autocratic and inflexible," West said. "His knowledge of public relations is nil."

West said he was "embarrassed" to say this in Kruger's presence "but I felt obliged to."

West said he was chagrined by a letter he received July 14 from Kruger. West said the "lethal letter" contradicted Howe on Fulton's progress in desegregation. The Fulton system operates in the large county outside the Atlanta city limits.

West said that Howe last April assured him that the Education Office approved Fulton's plans to comply with desegregation guidelines. But said West, Kruger's letter charged the Fulton school board with dragging its heels.

West said that last year 13 Negroes asked for transfers to white schools and all were transferred. He said 182 had asked this year and all will be transferred. The transfer period will remain open until September.

West said Kruger's chief complaint was that not enough Negroes were asking for transfers, and that school officials should hold community meetings to explain to Negro parents the benefits of transferring their children to white schools.

West said Howe, who agreed to study the request demanding Kruger's ouster, said he thought such meetings would be a good idea.

Kruger has also come under fire in South Carolina. Chester County, S. C., school officials said they may go to court if their federal aid is cut off because Kruger reports the county is not in compliance. Kruger said that the 171 Negroes transferring to white schools were not enough. Gov. Robert E. McNair said last week the state would help defend any district losing federal aid after seeking to comply.

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Morning Advocate
Baton Rouge, La
Aug. 9, 1966

# Desegregation Suits Extended In Court Here

Further legal actions where desegregation of schools has already been ordered was initiated Monday in U.S. District Court here.

Negroes filed the new actions against the Terrebonne, Iberville and Ascension school boards and the superintendents of schools in the three parishes.

The suit says the desegregation plan in Terrebonne is inadequate, listing a number of reasons, and asks hearing by Aug. 31, citing other cases now pending before the Fifth Circuit Court of Appeals which are expected to establish new standards for desegregation.

The other two cases cite the pending cases and ask "supplemental relief" to augment the June 14 court orders desegregating schools in Iberville and Ascension.

Both say they seek to preserve the right to submit evidence in support of further relief and ask for copies of any orders setting down hearings so that the rights of the plaintiffs will be preserved.

HOLIDAY V. WOLCOTT - CASE, CORRESPONDENCE
1964-1966

**Please Retain Original Order**

Box 37
Folder 21

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION -- CRIMINAL
OCEAN COUNTY COURT
TOMS RIVER, NEW JERSEY

WILLIAM HOLIDAY )
PLAINTIFF )
)
vs )
)
DELAFIELD S. WOLCOTT )
DEFENDANT )

## A-P-P-L-I-C-A-T-I-O-N

For Filing Civil Suit for:
Selling Goods not Belonging to
Defendant; Forging Plaintiffs
Name to Bill of Sale; Swindle.

************************************************************

HONORABLE JUSTICE OF THE SUPERIOR COURT, OCEAN COUNTY COURT HOUSE,
TOMS RIVER, NEW JERSEY

************************************************************

I, WILLIAM HOLIDAY, presently incarcerated in the New Jersey State Prison Farm at Rahway, New Jersey, make the following charges and accusations against said DELAFIELD S. WOLCOTT, R.F.D.#1, Box351, Jackson, New Jersey:

1). Mr. Wolcott and Plaintiff were business partners until Plaintiffs subsequent incarceration. Said two partners owned jointly one 1958 Bulldozer, Make Case of the value $3200. Upon the arrest and incarceration of Plaintiff, this Bulldozer was sold by Defendant to the Ocean Dozer Company for the amount of $2600. Mr Holiday was not notified of this proposed sale nor was he imbursed for his part of the ownership of said machinery: Mr. Wolcott forged Plaintiff's name to the bill of sale showing ownership of this machinery without the consent or knowledge of Mr. Holiday.

I, WILLIAM HOLIDAY, wish to bring charges in civil suit against DELAFIELD S. WOLCOTT for the rightful amount of money I am entitled to: to wit: $1300/.

State of New Jersey
County of Middlesex

Respectfully submitted,

William Holiday
William Holiday
N.J. State Prison Farm
Rahway, New Jersey

Sworn to and subscribed to

this 19th day of Oct

1964.

Notary Public

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 8, 1966

My Commission Expires.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
TOMS RIVER, NEW JERSEY

WILLIAM HOLIDAY )
APPLICANT )
)
vs )
)
OCEAN COUNTY JAIL )
& SHERIFFS OFFICE )
DEFENDANT )

## APPLICATION

To File Suit for Damages-Re: Deprivation of Rights; Medical and Personal.

HONORABLE JUSTICE OF THE SUPERIOR COURT, OCEAN COUNTY COURT HOUSE, TOMS RIVER, NEW JERSEY

STATEMENT OF CHARGES:
: DENIAL OF DOCTOR CARE DURING SERIOUS ILLNESS.
: DENIAL OF RIGHT TO WEAR EYEGLASSES WHEN NEEDED.
: DENIAL OF ATTENTION BY PHYSICIAN WHEN HURT.
: DEPRIVATION OF RIGHTS: RE: CORRESPONDENCE.

I, WILLIAM HOLIDAY, presently incarcerated in the New Jersey State Prison Farm, at Rahway, New Jersey make the following charges against the Ocean County Jail and Sheriffs Office:

1). Denied medicine when under doctor care (Private Doctor and Ocean County Jail Doctor), by Officer Ed Longaner, and under Sheriff Art Brown. Both these authorities were fully aware of my condition. They did willfully subject me to great danger and peril to life. County Jail Doctor ordered medicine to be issued by Sheriffs Department ordered it to stop.

2). Denied the right to have and wear my eyeglasses that were issued to me by the state prison doctor. Because of my illness and condition the outcome of this denial caused me pain and a set-back in my illness. The outcome of this denial was that I had to be sent to the state hospital.

3). Denied the right of Doctor Care when hurt by a fall due to neglect of the County and Sheriff's Department. Order was given by Sgt. Holloway in the nighttime and order given by Sgt. Hank in the daytime. Jail doctor ordered x-rays to be taken at once. This was not done, and I remained in serious pain for over 17 hours before I was taken for x-rays.

4). Denial of right to send out mail to my mother or doctor for help. My letters were taken to my wife (who was also incarcerated in the county jail) for her approval before they were sent out. She would advise them if I might receive help from the addressee or not as per order of Sgt. Hank.

I contend that the foregoing facts show a definite deprivation of Rights and it is my contention to file suit for damages and restitution.

I swear upon my oath that the fore-mentioned facts are true to the best of my knowledge.

Respectfully submitted,

William Holiday
N.J. State Prison Farm
Rahway, New Jersey

Sworn to and subscribed before me
this ______ day of ____________
1964.

Notary Public

My commission expires.

a copy of your letter to me

A COPY

SOPERIOR COURT OF NEW JERSEY TRENTON

MORTIMER G. NEWMAN. JR.
CLERK

NOVEMBER IO, 1964

ME. WILLIAM HOLIDAY
C/O NEW JERSEY STATE PRISON FARM
RAHWAY NEW JERSEY

DEAR MR. HOLIDAY

I HAVE YOUR TYPEWRITTEN LETTER, DATED NOVEMBER 5th, YOUR UNDATED HANDWRITTEN LETTER TOGETHER WITH ENCLOSURES. UNDER THE RULES OF COURT YOUR PAPERS ENTITLED "COMPLAINT" CAN BE ACCEPTED FOR FILING WITHOUT# PAYMENT ##### OF THE STATUTORY FEE ONLY IF A JUDGE OF THE SUPERIOR COURT, UPON APPLICATION BY YOU, SO ORDERS. I NOTE YOU INDICATE THE COPY IS TO BE "ISSUED TO" THE DEFENDANT. PLEASE BE ADVISED THAT SERVICE OF A SUMMONS AND COMPLAINT MUST BE OBTAINED THROUGH THE OFFICE OF THE SHERIFF OF THE COUNTY WHEREIN HE RESIDES. THIS OFFICE CANNOT ASSIST IN THAT RESPECT.

I NOTE THAT YOU HAVE HAD A LAWYER. I SUGGEST THAT YOU TAKE THIS MATTER UP WITH HIM SO THAT THE PAPERS CAN BE PUT IN PROPER FORM AND PROCEEDED UPON ACCORDING TO THE RULES.

I RETURN HEREWITH:

ORIGINAL AND COPY OF PAPER ENTITLED "COMPLAINT"
AGAINST DELAFIELD S. WOLCOTT
CARBON COPY OF PAPER ENTITLED "APPLICATION"
AGAINST OCEAN COUNTY JAIL AND SHERIFF'S OFFICE.

SINCERELY YOUR,

MORTIMER G. NEWMAN JR.

ENCLS.

for the Judge of Superior court

APPLICATION FOR THE FILING SUIT WITHOUT PAYMENT OF STATUTORY FEE.

SUPERIOR COURT OF NEW JERSEY.

(CAPTION)

(I) I AM THE (PETITION / DEFENDANT) IN THE ABOVE ENTITLED APPLICATION FOR SUIT.

b. I AM APPLYING FOR LEAVE [illegible] TO APPEAL AS AN INDIGENT, BASED UPON A VERIFIED PETITION FULLY SETTING OUT THE FACTS ASTABLISHING MY INDIGENCY.

(2) I AM UNABLE TO OBTAIN STATUTORY FEE IN THIS MATTER. WHEREFORE PETITIONER, PRAYS:

THAT THIS HONORABLE COURT ACCEPTED MY APPLICATION. AND COMPLAINT" FOR FILING WITHOUT FEE OR COST ON APPEAL, [illegible] (HIM)

William Holiday
SIGNATURE OF PETITIONER

STATE OF NEW JERSEY } SS.:
COUNTY OF ~~MIDDIESEX~~ Ocean

I William Holiday, BEING DULY SWORN ACCORDING TO LAW UPON (HIS) MY OATH DEPOSES AND SAY:

(I) I AM THE PETITIONER IN THE ABOVE ENTITLED ACTION.

William Holiday
SIGNATHRE OF PETITIONER

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 10th DAY
OF February, 1965
Donna L. Chambers
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 19, 1968

## FORM 5C

## APPLICATION FOR THE ASSIGNMENT OF COUNSEL ON APPEAL

(CAPTION)

I. I AM THE DEFENDANT IN THE ABOVE ENTITLED CRIMINAL CAUSE OF ACTION.

a. I HAVE HERETOFORE BEEN GIVEN LEAVE TO APPEAL AS AN INDIGENT ON THE BASIS OF A VERIFIED PETITION FULLY SETTING OUT THE FACTS ESTABLISHING MY INDIGENCY.

OR

b. I AM APPLYING FOR LEAVE TO APPEAL AS AN INDIGENT BASED UPON A VERIFIED PETITION FULLY SETTING OUT THE FACTS ASTABLISHING MY INDIGENCY.
(STRIKE OUT A OR B, WHICHEVER DOES NOT APPLY.)

2. I AM UNABLE TO OBTAIN COUNSEL TO DEFEND ME IN THIS MATTER.

WHEREFORE, PETITIONER PRAYS:

THAT THIS HONORABLE COURT ASSIGN COUNSEL TO REPRESENT (HIM) (HER) ON APPEAL, WITHOUT FEE OR COST.

William Holiday
SIGNATURE OF PETITIONER

STATE OF NEW JERSEY ) SS.:
COUNTY OF Ocean )

I William Holiday, BEING DILY SWORN ACCORDING TO LAW, UPON (HIS) (HER) OATH DEPOSES AND SAYS:

I. I AM THE PETITIONER IN THE ABOVE ENTITLED ACTION.

2. I HAVE READ THE FOREGOING PETITION AND THE SAME IS TRUE TO MY OWN KNOWLEDGE.

3. THIS AFFIDAVIT IS MADE TO INFORM THE COURT AS TO MY ###### STATUS OF INDIGENCY AND TO INDUCE THE COURT TO ASSIGN COUNSEL TO REPRESENT ME ON APPEAL AS AN INDIGENT DEFENDANT.

4 IN MAKING THIS AFFIDAVIT I AM AWARE THAT FALSE SWEARING IS A MISDEMEANOR AND THAT THE PUNISHMENT FOR FALSE SWEARING IS A FINE OF NOT MORE THAN $1000 OR IMPRISONMENT FOR NOT MORE THAN THREE YEARS OR BOTH.

William Holiday
SIGNATURE OF PETITIONER

SUBSCRIBED AND SWORN TO

BEFORE ME THIS 10th DAY

OF February, 1965.

Donna L. Chambers
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 19, 1968

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

TRENTON NEW JERSEY

WILLIAM HOLIDAY
PETITIONER,

V.

The Legislative Committee on Claims
State House Annex Trenton, N.J.

AFFIDAVIT OF AMOUNT
FILE FOR IN SUIT

STATE OF NEW JERSEY)
COUNTY OF ~~MIDDLESEX~~ Ocean) SS:.

I William Holiday, being suly Sworn upon my oath, and according to law that, the said demand for the petitioner which is myself is truth, in the above entitled cause is for compensation due petitioner. As a result of an unlawful neglect of an inforcement of a State Law. And of the Constitution Amendments (5-14.) Petitioner has ween deney his right's under the law. Greanted him by the United States Constitution and the State Laws of New Jersey and the Rules of the New Jersey Supreme Court.

I farther stated petitioner mother was assured of petitioner welfare in written by the State of New Jersey. As to his stay in the New Jersey Prison and under there jurisdiction. This was not done, in fact, petitioner has been deney in (Prison.)

I hearby under law claim for demand and shortage of life in illness. That is due me from the defendant, the sum of (Twenty-fime hundred thousand dollars.) This amount is fact taken from my pass income record, and what I could have made up to 55 years of age.

Subscribed to and Sworn
Before me this 10th Day
Of February 1965
Donna L. Chambers
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 19, 1968

William Holiday
WILLIAM HOLIDAY, PRO SE

STATE OF NEW JERSEY)
Ocean SS:.
COUNTY OF ~~MIDDLESEX~~)

AFFIDAVIT OF INDIGENCY

I, William Holiday, being duly Sworn according to law, on my oath, deposes and said:

1. I desire to petitione for a Show Cause Order under the laws of New Jersey and the Rules of the New Jersey Supreme Courts.

2. I am the Petitioner and the patient of the act, that happen on April 24, 1962, at the Marlboro Hospital, I was an inmate at the Malboro work camp, at that time I was assign to officer John Betsoe detail, it a must that an inmate follow orders at all time's in the New Jersey State Prison and it Jurisdiction. The officer in charge neglect to clear the way for the inmate safety that day of April 24, 1962, and in that needly neglect by the State I received an life time illness, I am still under doctor care, I was a human Doctor Bill to myself and mother for about 15 months without any help at all from the State.

3. I am unable to obtain funds from anyone including my family and associates, and represent that the following statements are true to the best of my information and belief.

A. I have no money on my person or in the custody of the warden.

B. I have ($1100.00) Eleven hundred Dollars, that the Ocean County Prosecutor has of mine which is been held Illegal. And I also have (1300.00) owed to me, which the Ocean County Court's are Black Mailing me out of with use of predjuice and I own a house which is to be sold for taxes. I still have one truck left a 1949 Dodge Dump, No car any more.

C. My house of which is valued at $6600. if it no taken over by Ocean County taxes office.

D. I have no insurace of which has a cash valued.

E. I own no other property.

F. I am married my wife income is unknown. My children are, William Holiday Jr. 17, Baby Ruth Holiday, 15, Marrilla Holiday, 13, and Mae France Holiday, 10.

G. Social Security No. Is unknown.

H. Last place of employment was Chrysler Co., Detriot Mich., my salary was about $51.00 per week.

4. I pray the court assign counsel to prosecute this matter.

5. This affidavit is made to inform the court as th my Status of Indigency, in making this affidavit I am aware that false swearing is a misdemeanor and that the punishment therefor is a fine of not more that $1000 or imprisonment for not more than three years or both.

William Holiday
WILLIAM HOLIDAY

Subscribed abd Sworn To
Before me this 10th
Day if February 1965
Donna L. Chambers
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 19, 1968

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION
TRENTON NEW JERSEY

WILLIAM HOLIDAY
PETITIONER

V.

Legislative, Committee, on Claims,
State Hoube Annex Trenton, N. J.

MOTION

The petitioner, William Holiday, moves this Court to direct that certain property, in the form of United States currency, of which he is the owner. A schedule of the amount of which is annexed hereto, and whoch on the day of april 24,1962 after been hurt, by a window drop on my head, by a patient of the Marlboro hospital. The officer in charge assign me work on the basement windor,this window that hit me came from the second floor of the Baker Shop I remember coming to the doctor office to get my head sewed up, I then was taken back to the Marlboro camp, and not to a hospital as you know an inmate cannot be a patient at the Marlboro hospital. So I have been told by the officer's of the camp.

I was at the camp for about two and half hour then I had to be rush back to the same hospital the Doctor told the officer that I needed to be admitted at once, and X-ray must be made on my head and right arm and hand. My left arm and back the skin was off them and they could be seen, but again the officer told the Doctor this time that an inmate could not be admitted to that hospital and that I must go to Rahway prison for the Hospital. It was about 15 hours before I got in a hospital and another 26 hours before X-Ray's was made and later befor I got some medicine to ease my pain. I had to pay out of my own account to get word to my mother that U had been hurt two days later.

I further states that I am still in ill health and must get to an hospital for an operation, and I wish to go to an Vet. Hoppital. Not State, I am told I have a Blood Clot in my head.

A date was set for my lawyer and myself to come to trenton and talk on the matter of sellerment that was April 9, 1964, but I got put in jail on the 4 of April 1964, and now it say there is now award of compersation, for me it is beleived that is the reason I am back in New Jersey State Prison I shall fight the matter in any court. First this affidavit to the Superior Court and then the Supreme Court. And if no Justice ther I shall taken it in to the federal Court. I have proof of my Illness and where I receive it.

I also States that I be paid the money back my mother and myself and the Ocean County welfare paid out on me and for me done the time I was not able to help muself. I have records of everything.

Subscribed and Sworn to

William Holiday
WILLIAM HOLIDAY

Before me this 10th Day

Of February 1965

Donna L. Chambers

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 19, 1968

Misc ref.

FROM
WILLIAM HOLIDAY

222.E4TH.ST.

LAKEWOOD,NJ.

JANUARY I2, 1966

JAN 2 5 1966

TO.
MR. JAME FARMER

PRESIDENT OF CORE.

DEAR MR. FARMER.

MY NAME IS WILLIAM HOLIDAY, I AM 36 YEARS OLD AND HAVE THREE TEENAGE GIRLS. TO TRY AND LOOK AFTER. I AM NOT # IN THE BESS OF HEARTH DUE TO AN ILLNESS IMPOSE UPON ON ME DONE MY STAY IN THE NEW JERSEY STATE PRISON. I WAS HURT ON APRIL 24, I962 AND THEREFORE HAS UNABLE TO MAKE A LIVEN FOR MYSELF THEREAFTER. I DO NOT REC. ANY AID FROM THE STATE OF NEW JERSEY BECOUSE OF MY ILLNESS FROM### NEW JERSEY STATE PRISON BECOUSE IT WAS A CASE OF NEGLECT ON THE SIDE OF THE STATE.AND I CAN GIVE YOU PROOF OF THIS. I HAVE GONE TO LAWYERS TO SEE WHAT COULD BE DONE ABOUT IT. AND EACH TIME I GET TURN DOWN WITHOUT A HEARIN ON THE MATTER. AND NOW I AM BEEN HELD IN THE DISCRINATION. THE OCEAN COUNTY POLICE DEPT. HAS TOLD COUNTLY LIES ON ME AND THE STATE BACK THEM UP IN IT. ALSO UNION COUNTY NEW JERSEY IN ELIZABETH JUST WALK UP AND TOOK MY CAR FROM MY WIFE. AND I NEVER GOT IT BACK. THE POLICE SAY THE CAR WAS NOT REGISTOR. BUT THAT WAS NOT SO. THE CAR WAS REGISTOR I HAVE RIGHT NOW THE REGISTRATION TO THAT CAR IN FRONT OF ME. AND YET THE NEW JERSEY MOTOR VEHICLES BACK THEM UP IN THAT LIE. I THEN WENT AND HAD COPYS MADE OF OWNERSHIP AND REGISTRATION AND SENT IT TO THE DIVISION ON CIVIL RIGHTS. AND THEY WOULD NOT HELP ME FULLY KNOWN I WAS IN THE RIGHT. AND YET NEW JERSEY STATE MOTOR VEHICLES SENT ME A NEW CARD TO RENEW THE SAME CAR THEY SAID WAS NOT# REGISTRATOR. SIR. I AM TELLING YOU ONE WOULD HAVE TO SEE THE FACTS. TO KNOW THE TRUE.AND I HAVE THE FACTS HEREIN MY FILES.THERE HAS

BEEN TWO OTHERS CHARGES AGAINST ME BECAUSE OF THE POLICE #### LIES BUT AFTER HEARIN THE CASES AND I HAD FACTS AFTER TWO FULL HR. THE JUDGE DISMISS IT. BUT NOW COME THE BIG ONE. THE ONE I WAS ARREST FOR ON APRIL 4, 1964 I AM STILL GONE TO COURT ON IT. AFTER STAYING IN JAIL AND ### THE PRISON FROM THE 4 OF APRIL 1964 TILL THE 15 OF JANUARY 1965 AND I HAVE HAD TO GO BACK TO COURT 4 TIMES AND I STILL HAVE TO GO BACK ON THE 24 OF JANUARY 1966. I HAVE BEEN FRAM IN THIS MATTER BY THE LAW ONLY I CAN'T GIVE YOU PROOF ON THIS. I DO NOT HAVE ALL JUST YET. BUT THERE TWO WHITE MEN CAME TO MY HOME TO BEAT ME UP IF I DIDNT CASH THE MONEY ORDERS THEY HAD LEFT THERE A FEW DAYS BEFORE WELL SIR. I KNOW I DIDNT HAVE MUCH OF A FIGHT WITH THEM. BECAUSE THEY SAID THEY WOULD HURT OR KELL MY WIFE OR MOTHER. I KNOW THESE GAYS ONE FROM THE PRISON THAT WAS KILL BY HIS VERY OWN GRUP AND THESE WAS SOME OF THAT GRUP. AND HURTEN PEOPLE IS ONE OF THERE HOBBY. I WAS SICH AND HELPNESS AND UNDER THE A DOCTOR CEAR AT THE TIME UNABLE TO LOOK OUT FOR ANY ONE. AND I COULD NOT GO TO THE LAW. BESIDES KNOWN WHAT THEY HAVE BEEN TRYING TO DO TO ME WHAT COULD I HAVE TOLD THEM TWO GAYS ARE TRYING TO MAKE ME AND MY WIFE CASH SOME MONEY ORDERS FOR THEM. EVEN IF THE POLICE DID PICK THEM UP THEY ONIY DENY IT AND THE POLICE WOULD LET THEM GO LIKE THEY DID DO. WERE WOULD MY FAMILY AND I BEEN RIGHT IN LINE FOR SOME HOT LED. THAT WERE, I HAVE THE NEWS PAPERS FOR WHICH ARREST TOOK PLACE IN THIS CASE. THESE NEWS PAPERS SAID AND STATED THAT A FIRST HAND REPORT FROM THE POLICE DEPT. GIVEN HIM BY ONE SGT. JUSTUS. THE GRATE POLICE SGT. MR. ROSS J. JUSTUS HAD INDEED FIX NAMES. AND COLORED AND RACE. ON APRIL 3, 1964 FRIDAY. AND WE DID NOT GET STOP BY THE COPS. UNTELL SAT. APRIL 4, 1964 SOME (15) HR. BEFORE ANY BODY HAD INFORMATION ABOUT WHOM IT MIGHT BE. NOT EVEN THE POLICE. AND YET MR. JUSTUS FIX NAMES. ALL THE INFORMATION THAT WAS GIVEN IN THIS REPORT WAS WRONG. EXCP. THE YOUNG LADY NAME. YET SHE WAS USES ANOTHER NAME IN THIS OPPERATION SO I HAVE LEAND. I WAS CHARGED WITH POSSESSION OF STOLEN### MONEY ORDERS FRAID FORGERY AND AIDING AND ABETTING. HOW CAN THIS BE I [illegible]

VER SIGNER ANY NAME TO ANY MONEY ORDER EXCP. MY OWN ANY TIME. NOR DID I CASH ANY MONEY ORDER ANY TIME AT ANY #### PLACE THE COPS. SAY WE HAD GONE TO. NOR DID ANY OF THE WITNESSES SAY I DID. NOR DID I HAVE ANY MONEY ORDER ON ME WHEN WE WAS ARREST. ALL THESE THINGS IS A FACT. AND MOSE OF IT IS IN POLICE FILES AND RECORDS. AND I CAN AND I HAVE GIVE PROOF. IN THIS MATTER AND YET I AM STILL HAVEN TO GO COURT.

THE POLICE HAS STATED THAT I TOLD THEM THE MONEY ORDER WAS LEFT IN ONE OF MY TRUCKS. THIS IS NOT SO. THE POLICE WAS TOLD BY ME THAT THE MONEY ORDER WAS LEFT IN MY PARTNER TRUCK MR. DELAFIELD S. WOLCOTT. THERE WAS NON OF MY TRUCKS OR CARS WAS HOME AT THIS TIME THE TRUCKS BELONGER TO ME. (ONE) WAS IN THE SHOP TWO WEEKS PIOR TO THE SET TIME FIX BY THE POLICE AND THE COURT IN THIS CASE. THERE IT REMAIN TILL SOME TIME IN JULY. THIS IS ALL SO IN THE RECORDS OF THE COUNTY DETECTIVES MR. CALVIN WOOLLEY CHIEF.

I HAVE TOLD YOU MENNY THINGS AND YET IT ONLY HEARSAY TO ANY ONE UNTELL I PROVE IT. WELL SIR. I UNDERSTAND. AND THAT IS WHY I PRAY YOU WILL SEND SOME ONE TO HELP ME. IN THIS RESPECK, I AM VERY BAD NEED OF YOUR HELP SIR. AND I CAN PROVE ALL THE THINGS I HAVE SAID I COULD. ALSO I WOULD LIKE TO BECOME A MEMBER OF CORE. I AM A MEMBER NOW OF THE NAACP.

I AM ALSO SENDEN ALONG HERE WITHIN. SOME PAPERS. FOR YOU TO LOOK AND SEE IF SOME CAN BE DID ABOUT THEM. YOU MAY ALSO FINE SOME THINGS USEFULL FOR PROOF. IN THIS CASE. I AM ALSO SENDEN ALONG A COPY OF A LETTER I SENT TO THE ASSIGNMENT JUDGE OF OCEAN COUNTY. I KNOW I WILL NEED IT ON FILE AND I CAN'T THINK OF A BETTER PLACE THAN CORE.

THANK YOU VERY FOR YOUR MOST
VALUEABLE TIME SIR.

YOUR VERY TRULY

WILLIAM HOLIDAY

[illegible] assignment judge

CHAMBERS OF ELVIN R. SIMMILL

WILLIAM HOLIDAY
222 E4.TH.ST.
LAKEWOOD, NEW JERSEY

TO THE HONERABL JUDGE
ELVIN R. SIMMILL ASSIGNMENT
JUDGE OF OCEAN COUNTY.

JANUARY 12, 1966

DEAR SIR. YOUR HONOR.
IN VIEW OF A LETTER DATED JANUARY 26, 1965.. FROM YOUR CHAMBERS AND IN VIEW OF ANOTHER LETTER OF YOUR CHAMBERS DATED OCTOBER 20, 1964 A COPY TO ME AS YOU WROTE TO MR. RICHARD KUSHINSKY ESQ. TO WHICH YOU SPOKE OF THE MONEY THAT WAS TAKEN OFF ME AT THE TIME OF MY ARREST ON APRIL 4, 1964.. WELL SIR. THIS LETTER IS IN REGARD OF THAT MATTER MY MONEY. THE OCEAN COUNTY PROSECUTOR HAS NOT RETURN IT TO ME AS OF YET NOR HAVE HE RETURN ANY OF THE GOODS. THAT WAS TOOK FROM MY HOME. AND YET THERE IN THE OCEAN COUNTY COURT HOUSE LIES A COURT ORDER SNIGE BY THE HONOR.JUDGE ALBERT S. LARRABEE. ORDERNING THAT AL MONEY AND GOODS TAKEN FROM MY HOME AND OFF BF ME ON THE 4 TH. APRIL 1964 SHOULD BE RETURN TO ME. THIS ORDER WAS FROM THE MOTION TO SUPPRESS EVIDENCE. ON MARCH 26, 1965 AND APRIL 2nd 1965. I REC. A LETTER DATED JUNE 10, 1965 ON THE 7 DAY OF JANUARY 1966. A GRAND TOTAL OF(6) MONTHS AND 7 DAYS. LATE A PRETTY## GOOD PICTRUE FOR THE LAW.THE DATED OF THIS LETTER FROM THE PROSECUTOR OFFICE. DATED JUNE 10, 1965 SHOW A VERY GOOD SHOWING OF WHAT I HAVE SAID ALONG. PREDJUICE AND DISCRINATION AND THAT NOT ALL. ACCORDING TO THE FIFTH AMENDMENTS OF THE UNITED STATES, ###### SAYS NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE. WITHOUT JUST COMPENSATION. WELL SIR ONE COULD HARDLY CALL SUCH AS THIS Justice CAN ONE.

ALSO THE SIX AMENDMENT SAYS. THE ACCUSATION BE INFRMED OF THE NATURE AND CAUSE. TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM. WELL SIR ON MARCH 26 AND APRIL 2nd WAS A MOTION TO SUPPRESS EVIDENCE.AND I UNDERSTAND THE MOST OF IT WAS. THEREFORE THE CHARGES AGAINST ME WOULD

ME SOME WHAT DIFF. AND IT IS IN THIS RESPECT, I FEEL I HAVE NOT BEEN DULY JUSTIFIED BY THE PROSECUTOR. IN ACCORDING TO THE CONSTITUTIONER I KNOW I HAVE NOT BEEN JUSTIFIED.BUT THEN THIS VERY SAME LAW AUTHORITY HAS UNLAWFULL DENIED ME MY RIGHT. BY DENING ME THE ### RIGHT TO TAKE OUT A COMPLAINT ON A WHITE MAN FOR SIGNING MY NAME TO A BILL OF SALE OF A BULLDOZIER OWN BY MYSELF AND THE WHITE MAN I SPEAK OF IN THIS MATTER. HE FORGE MY NAME WITHOUT MY PERMISSION OR MY KNOWLEDGE AND WHILE I WAS IN PRISON. HELPNESS IN THAT RESPECT. AND FULLY AWARE OF WHAT THIS MAN HAD DID. WAS THE OCEAN COUNTY LAW AUTHORITY IN FULL IN A LETTER FROM JUDGE LARRABEE ON MAY 6, 1964 SAYS USUALLY ANY ONE OF THE PARTNERS HAS AUTHORITY TO ACT FOR THE PARTNERSHIP. MAY SO BUT IS IT ALSO HIS RIGHT TO KEEP ALL THE MONEY REC. FROM THE SALE. I THINK NOT NOR DO I FEEL ANY HAVE THE RIGHT TO SELL ANY THING OF MINE WITH OUT MY KNOWLEDGE, OR SIGNE MY NAME TO ANY THING. IF SO THE WHAT AM I HAVING TO HAVE TO GO TO COURT SOME FIVE OR SIX TIMES FOR AIDING AND ABETTING? THERE ARE MORE LETTERS IN THIS MATTER FROM THE AUTHORITY ALL SAYING NOTHING IS WRONG. JUST ONE MORE WAY OF SAYING NEGROES HAS NO RIGHT TO TAKE OUT A COMPLAINT ON A WHITE MAN. NOT EVEN A HEARING ON THE MATTER.

IN YOUR LETTER TO ME ON JANUARY 26, 1965 YOU SUGGEST I MAKE APPLICATION TO THE OCEAN COUNTY COURT TO HAVE IT RETURN TO ME. WELL I DID AND SO DID MY ATTORNEY. AND IT HAS BEEN ORDER BY THE JUDGE OF THAT COURT ON OR BEFORE JUNE IO, TO BE RETURN TO ME. EVEN YOU SIR. IN ONE OF YOU LETTER TO MR.KUSHINSKY ON OCT. 20, 1964 SAYS YOU WHY THE PROSECUTOR IS HOLDING IT AFTER CONVICTION YOU DO NOT KNOW.WHICH LEAVE ME WITHOUT UNDERSTANDING IN THIS MATTER. ##### JUST WHO IS HAVEN THE SAY OVER MY LIFE? IT SEEM THAT ALL LAWS ARE BROKEN BY THE LAW TO COVER UP ILLEGAL ARREST ON ME ON

TO THE A.J.S.C.

JANUARY 12, 1966

APRIL 4 TH. 1964. SIR. I AM VERY MUCH AWARE OF MY CONSTITUTIONER Rights HAS BEEN VIOLATED MENNY TIMES IN THIS CASE. THEREFORE I MUST INSIST UPON JUSTICE WITHIN ACCORDING TO THE RULES OF LAW BY THE FACTS AND THE CONSTITUTIONER OF THE UNITED STATES. AND NOT THE SUPPOSESS THE PROSECUTOR HAS BEEN ### USEN IN COURT TO CONVICT ME. THE LAW AUTHORITY HERE IN OCEAN COUNTY WILL UNLAWFULL AND FREE WILL LIE OR SAY ANY THING TO GET ME IN PRISON. THEY HAVE IN THE PASS. AND I HAVE FACTS HEREIN MY FILES TO SUPPORT THAT STATEMENT. I ASK NOW HEREIN THIS LETTER THAT I BE ALLOW TO GIVE THESE FACTS IN COURT AND TO THE JURY. ON THE 24TH. OF JANUARY 1966. OR ANY OTHER DAY SET FOR ME TO APEAL IN COURT IN THIS CASE. SHOULD THIS DATE CHEAN FOR SOME REASON.

AS A CITIZEN OF THE UNITED STATES. AND THE RIGHTS GRANTED ME BY THE ## UNITED STATES AND IT'S CONSTITUTIONER THEREOF. ### I RESPECTFULL ASK YOUR HONOR. JUSTICE UNTO ME ACCORDING TO THE RULES OF LAW. I ALSO ASK THAT I BE PROVIDED WITH THE CHARGES THAT NOW CONFRONTED ME. AND THE COPYS OF THE TRANSCRIPTS TAKEN BY THE COURT UPON EACH TIME I HAVE APPEAL IN COURT IN THIS CASE. IT IS A STATE LAW SET FORES BY THE STATE LEGISLATION.IF I REQUIRE AND WITHOUT FUNDS TO PAY FOR IT. I DO REQUIRE IT AND I AM ## WITHOUT FUNDS.

SHOUL IN ANY WAY UNDER THE STATUTE OF THE NEW JERSEY STATE LAW, FAIL OR BE VIOLATED IT WILL BE LOOK UPON AS AN ACT. OF PREDJUICE AND DISCRINATION. THEREFORE I WOULD BE FORSE TO SEEK JUSTICE ELSEWERE. AGAIN LET ME ADD I ONLY WISH MY MONEY BACK AND FREEDOM TO GET OUT OF NEW JERSEY.

THANK YOU YOUR HONOR. I WILL RESPECHFULL ARWATE
YOUR RETURN, YOUR TRULY WILLIAM HOLIDAY

William Holiday

WILLIAM HOLIDAY
222 E 4TH,ST.
LAKEWOOD, N.J.

a Copy

TO THE HONOR. JUDGE NOVINS.
OCEAN COUNTY COURT HOUSE
TOMS RIVER, NEW JERSEY.

JANUARY 17, 1966

DEAR SIR. YOUR HONOR.

MY NAME IS WILLIAM HOLIDAY;

I WAS IN TO SEE YOU TODAY ON THE MATTER OF AN ORDER THAT WAS SIGN AND ISSUES BY THE HONOR JUDGE LARRABEE. FOR THE RETURNOF MONEY AND GOODS. ######## SEIZED, FROM ME AND MY HOME ON APRIL 4, 1964 THE PROSECUTOR AND HIS STAFF. TOLD ME TODAY THAT THE JUDGE HAD NO AUTHORITY TO ISSURES AN ORDER SUCH AS THAT. AND YET THE ORDER IS THERE ALONG WITH A NOTICE MOTION FROM MR. J HERBERT JOSEPHS. TO BE REMOVE AS MY COUNSEL.

I WOULD BE VERY GREATFULL IF YOU INLIGHTEN ME ON JUST WHOM DO HAVE THE RIGHT TO ISSURES AN ORDER OR NOT TO ISSURES AN ORDER AND WHOM HAS TO DO THE PART OF OBEYEN, THE PROSECUTOR OR THE JUDGE. THE VERY SAME THING HAS HAPPEN BEFOUR THE PROSECUTOR WOULD NOT OBEY AN ORDER BACK IN DEC. 1964 IN THIS SAME CASE. FOR MONEY TO BE RETURN TO ME.I WOULD APPRECIATE IT IF YOU INFORM ME AS TO WHAT IS GONE ON IN THIS CASE AND WHEN.

YOUR VERY TRULY

WILLIAM HOLIDAY

William H Holiday

a Copy.

FROM;
WILLIAM HOLIDAY
222. E 4TH.ST.
LAKEWOOD, NEW JERSEY

TO;
DEPT. INSTITUTIONS AND AGENCIES
### MR. EUGENE T. URBANIAK
DEPUTY ATTORNEY GENERAL,

JANUARY I8, ### 1966

DEAR MR. EUGENE T. URBANIAK.
ON THE 22, OF NOVEMBER #### 1964. I WROTE YOU A LETTER INREGAURD
OF MY CONVICTIONS.
AND IN YOUR REPLY.TO ME WAS THERE WAS NOTHEN YOUR OFFICE COULD DO,
I NOW FINE IT INDEED NECESSARY TO WRITE THIS #### PUBLICE STATE
GOV. DEPT. ONCE MORE,
NOT AS MY FIRST LETTER.BUT A DIFF. MATTER ONE THAT YOUR OFFICE
DOES HAVE THE JURISDICTION OVER.
MY LETTER IS IN THE ORDER OF A COMPIANT, AND SHOULD NOT BE MISS.
INFORM, IN FACT A REQUEST IS REQUIRED;

(I) DEPRIVED OF MY CONSTITUTIONER RIGHTS.IN THE FORM OF UNITED STATES.
CURRENCY;AND GOODS,

(2)DENIED EQUAL PROTECTION OF THE LAW.

(3) DEPRIVED OF MY CONSTITUTIONER RIGHTS. TO TRIAL BY A JURY.

COMPLAINT IN DETAIL ON NEXT PAGE.

THIS IS MY CONSTITUTIONER RIGHTS. AND I MUST INSIST THAT ####### THEY BE EXERCISE. IT IS ALSO MY RIGHT TO BE ASURES OF A JUST AND PUBLIC TRIAL. WELL I HAVE NOT REC. THAT FROM THE OCEAN COUNTY COURTS. SO I FINE MYSELF HAVEN TO INSIST,UPON THIS DEPT. TO GIVE ME ##### ASURES. IN THAT RESPECK,
THE STATE OF NEW JERSEY HAS ME CHARGE WITH FORGE. YET THE STATE HAS DEPRIVED ME OF MY RIGHTS. TO TAKE OUT A COMPLAINT AGAINST A MAN WHOM FORGE MY NAME TO BILL OF SALE AND REC. MONEY FROM IT. MY MONEY. AND I HAD AND STILL HAVE PROOF OF THIS. BUT THEN THIS MAN IS A WHITE MAN. AND IT NOTHING FUNY ABOUT THAT. I MOST CERANTLY INSIST THAT THIS FACT BE JUSTIFIED. I HAVE PREPARED A COPY OF THIS LETTER. TO CIVIL RIGHTS DIVISION, THE NAACP. AND CORE. AS I HAVE BEEN INSTRUCTED.

TOWNSHIP OF LAKEWOOD COUNTY OF OCEAN,

STATE OF NEW JERSEY

WILLIAM HOLIDAY,
[illegible]
VS.
STATE OF NEW JERSEY
DEFENDANT

COMPLAINT

(STATUTORY OR CRIMINAL LAW OFFENSE)

STATE OF NEW JERSEY )
) SS.
COUNTY OF OCEAN.... )

(I) I WILLIAM HOLIDAY RESIDING AT 222 EAST 4TH.ST. LAKEWOOD NEW JERSEY
I/I7/66 UPON MY OATH SAYS THAT.

WILLIAM H. HUBER OCEAN COUNTY PROSECUTOR. DID BY WILLFUL ACT. ON THE PART OF THE SAID (WILLIAM H. HUBER) THEN AND THERE BEING DONE UNLAWFULLY, DEPRIVE THE COMPLAINTER OF HIS CONSTITUTIONER RIGHTS. BY REFUSING TO OBEY A COURT ORDER SIGN BY JUDGE ALBERT S. LARRANCE TO RETURN MONEY AND GOODS. TAKEN FROM COMPLAINTER UPON DATE OF HIS ARREST, CONTARY TO THE 4-5-I4 AMENDMENTS OF THE CONSTITUTIONER,

(2) ## I WILLIAM HOLIDAY,
I0/I/64. FURTHER CHARGE THAT THE SAID WILLIAM H. HUBER, DENIED COMPLAINTER EQUAL PROTECTION OF THE LAW, BY WILLFULL AND UNLAWFULLY KNOWING THE COMPLAINTER PARTNER MR. DELAFIELD S. WOLCOTT DID UNLAWFULLY AND KNOWING SIGN COMPLAINTER NAME TO A BILL OF SALE AND REC. MONEY FROM THE SALE, AND THE SAID WILLIAM H. HUBER, REFUSE TO PROSECUT THIS MAN.

(3) ON JUNE 9, I964 DEPRIVED OF MY CONSTITUTIONER RIGHTS, BY THE STATE LEGISLATIVE COMMITTEE ON CLAIMS, DID AND THERE UNLAWFULLY AND WILLY KNOWING. DEPRIVED COMPLAINTER OF HIS CONSTITUTIONER RIGHTS. BY PRETENDING A HEARING WITHOUT; COMPLAINTER PRESENT OR KNOWLEDGE OF IT. CONTARY TO THE UNITED STATES

[illegible] HOTEL WALDORF ASTORIA vs. CORE, 1965-1966

of Wisconsin

Please Retain Original Order

Box 3
Folder 2

## SERVICE BY DELIVERY TO INDIVIDUAL DEFENDANT

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within summons and complaint on

defendant therein named, by delivering a true copy thereof to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

Sworn to before me this

day of 19

## SERVICE BY DELIVERY TO CORPORATE DEFENDANT

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within summons and complaint on

a corporation, a defendant therein named, by delivering a true copy thereof to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be thereof.

Sworn to before me this

day of 19

---

38 Park Row

*Index No.*

**Civil Court of the City of New York**
**County of** New York

**P**

HOTEL WALDORF ASTORIA
CORPORATION

*Plaintiff*

*against*

CONGRESS OF RACIAL EQUALITY,
38 Park Row INC.

*Defendant*

Mrs. Newman Levy

# Summons

7/13/9

## INDORSED COMPLAINT

*A statement of the nature and substance of the plaintiff's cause of action is as follows:*

Action for banquet services rendered by the plaintiff to the defendant, at the special instance and request of the defendant, on December 9, 1963, at the agreed price and reasonable value of $3,654.20.

No part of said sum has been paid although duly demanded.

Also action on account stated.

8/20/65

**NORMAN & ALLEN**
*Attorney(s) for Plaintiff*
*Post Office Address*

**160 Broadway, N.Y.C.**

*C* 266—Summons, indorsed complaint for money only, personal delivery to defendant within N.Y.C. Rule 2 b Civil Ct. 2-64. c

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF **NEW YORK**

**HOTEL WALDORF ASTORIA CORPORATION**

*Plaintiff*

*against*

**CONGRESS OF RACIAL EQUALITY, INC.**

*Defendant*

*Index No.*

**Summons**

*Plaintiff's Residence*
*Address:*
49th St. & Park Ave., N.Y.C.

*The basis of the venue designated is:*

*To the above named defendant*

**You are hereby summoned** *to appear in the Civil Court of the City of New York, County of* New York *at the office of the Clerk of the said Court at* 111 Centre St. *in the County of* New York *City and State of New York, within ten days after service of this summons upon you, exclusive of the day of service, and to make answer to the complaint; upon your failure to answer, judgment will be taken against you for the sum of $* 3,654.20 *with interest thereon from the* 9th *day of* December *19*63 *together with the costs of this action.*

*Dated, the* 11th *day of* August *19*65 .

*Defendant's Address:*

38 Park Row
N.Y.C.

NORMAN & ALLEN
*Attorney(s) for Plaintiff*
*Post Office Address and Telephone Number*
160 Broadway, New York, N.Y.
Worth 24161

## INDIVIDUAL VERIFICATION

STATE OF NEW YORK,
CITY OF
COUNTY OF } ss.:

he is the , being duly sworn, deposes and says that read the foregoing in the within action; that he has the same is true to h own knowledge, except as to the matters therein stated to be alleged on and knows the contents thereof; that information and belief, and that as to those matters he believes it to be true.

Sworn to before me, this
day of 19

## CORPORATION VERIFICATION

STATE OF NEW YORK,
CITY OF
COUNTY OF } ss.:

he is the of the , being duly sworn, deposes and says that that he has read the foregoing herein and knows the contents thereof, and that the same is true to h own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the is because the said is a corporation, and deponent an officer thereof, to wit its

Sworn to before me, this
day of 19

## AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
CITY OF
COUNTY OF } SS.:

being duly sworn, deposes and says, that he is over the age of years. That on the day of 19 at No. in the he served the foregoing upon by delivering to and leaving personally with said a true copy thereof.

Deponent further says, that he knew the person served as aforesaid, to be the person mentioned and described in said as the therein.

Sworn to before me this
day of 19

## AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK
CITY OF N. York
COUNTY OF New York } SS.:

Charlaine Shelt, being duly sworn, deposes and says that She is secretary to Carl Roehlin Esq the attorney for the above named defendant herein. That on the 27th day of August 1965 She served the within Answer upon Norman & Allen the attorneys for the above named Plaintiff by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Post-Office—a Branch Post-Office—a Post Office Box regularly maintained by the United States Government at in said County of New York directed to said attorney for the Plaintiff at No. 160 Broadway N.Y. N. Y., that being the address within the State designated by h for that purpose upon the preceding papers in this action, or the place where h then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of 21 years.

Sworn to before me this
7th day of September 1965

TAKE NOTICE that the
copy of a
filed and entered in the office
of the
N. Y., 19

Yours, &c.,
CARL RACHLIN

for

(Office and Post Office Address)
280 BROADWAY
of Manhattan New York 7, N. Y.

Esq.,

Attorney for

---

PLEASE TAKE NOTICE that

which the within is a true copy, will be
for settlement and signature herein to
Justice
of the Justices of the within named

Borough of
in the City of New York
day of 19
o'clock in the forenoon.

N. Y., 19

Yours, &c.,
CARL RACHLIN

for

(Office and Post Office Address)
280 BROADWAY
of Manhattan New York 7, N. Y.

Esq.,

for

---

Index No.................................. 19

Hotel Waldorf Astoria, Corp.
Plaintiff
– against –
Congress of Racial Equality, Inc.
Defendant.

Answer

CARL RACHLIN
Attorney for Congress of Racial Equality
(Office and Post Office Address)
~~280 BROADWAY~~ 38 Park Row
Borough of Manhattan ~~New York 7, N. Y.~~ N.Y. 10038
WORTH 2-5105

To Norman & Allen Esq.,
160 Broadway
Attorney for Plaintiff

Service of a copy of the within
is hereby admitted

Dated, N. Y., 19

Attorney for

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

---------------------------------------------X

HOTEL WALDORF ASTORIA
CORPORATION,
Plaintiff

- against -

CONGRESS OF RACIAL EQUALITY, INC.

Defendant

---------------------------------------------X

Answer of
Defendant
and Demand
for Bill
of Particulars

Defendant herein, CORE - CONGRESS OF RACIAL EQUALITY, INC., for its answer herein states:

That it specifically and generally denies the allegation set forth in the endorsed summons.

Yours etc.,

CARL RACHLIN
Attorney for Defendant
CORE-CONGRESS OF RACIAL
EQUALITY, INC.
38 Park Row
New York, New York 10038
CO 7-6270

Defendant demands that plaintiff serve within 10 days hereof a Bill of Particulars:

1) Set forth a copy of any agreement upon which said claim is based or if oral, the substance thereof, stating with whom the agreement was made.

2) Set forth whether all the terms of the agreement were performed by the plaintiff, if not, which were not.

Yours etc.,

CARL RACHLIN
Attorney for Defendant
CORE-CONGRESS OF RACIAL
EQUALITY, INC.
38 Park Row
New York, New York 10038

CO 7-6270

November 5, 1965

Bernard Mazur, Esq.
258 Broadway
New York, New York

RE: Hotel Waldorf Astoria Corporation v. Congress of Racial Equality, Inc.

Dear Mr. Mazur:

Pursuant to your suggestion, Carl Rachlin filed an answer(enclosed) and we are resubmitting the matter to your capable hands for negotiation, reconciliation, etc.

Please let me know how you fare.

Sincerely,

SMN/cs

STEPHEN M. NAGEER

# MEMORANDUM

TO: Messrs. McKissick, Wiley, Callender, Day

FROM: Carl Rachlin

January 27, 1966

SUBJECT: Clarification of the Waldorf Astoria Case

1) There is no judgment against CORE.

2) This case arose out of what was believed to be a poorly handled dinner at the Waldorf Astoria. Eva Levy was so angry, that she refused to pay the balance of the bill. It was she who asked Joseph Mazur to handle the case. We did not even know about it until fairly recently.

3) In any event, Herb and I spoke to Mr. Reynolds of Chrysler Credit who told us both that it was not the pending law suit which was the main reason for turning down the automobile deal, but rather an unsatisfactory credit history with such previous organizations as Kenney and Granite.

4) He also said that even if we paid the law suit in full we still could not get the cars.

5) They heard about the pending case because they make a very careful credit check to learn of law suits' even where there is no actual judgment as well as other things affecting credit.

# MEMORANDUM

File memos to

TO: Floyd McKissick    cc: Cora Coleman

FROM: Carl Rachlin

DATE: April 6, 1966

After some discussion with Mr. Allen, from the firm of Norman & Allen, and the attorneys for Waldorf, he wanted $1,000 down. The best he will accept at this point, he says, is $500 down and $250 a month. I am sure I can do a little better than this but not very much. He certainly will not go below $200 a month.

The trial will be coming up fairly soon. At this moment he is still willing to waive interest and cost so that the total to be paid is $3,200.

CR/tp

# MEMORANDUM

Waldorf

TO: Floyd McKissick cc: C. Coleman

FROM: Carl Rachlin

DATE: April 21, 1966

RE: Waldorf Astoria v. CORE

Annexed are the settlement papers in the Waldorf Astoria matter showing payment of $200 a month, beginning the 28th of April and every month thereafter, with the whole amount becoming due if we miss the payment.

As you know this is the usual procedure. Please authorize me to sign so I can close out the matter promptly.

CR/tp
Encl.

# MEMORANDUM

TO: Clora Coleman - cc: F. McKissick, L. Lynch

FROM: Carl Rachlin

DATE: April 25, 1966

RE: Waldorf Astoria v. CORE

This is to remind you that we have agreed to pay formally $200 a month commencing April 28th. If we are five days or more late then Waldorf Astoria can enter judgment against us for the entire amount plus interest. Interest in this matter alone would be about 18% of the judgment and, therefore, this is a matter of some concern.

CR/tp

HUGART F. NORMAN (1905-1951)
JOSEPH D. ALLEN

LAW OFFICES
**NORMAN & ALLEN**
160 BROADWAY
NEW YORK, N. Y. 10038

WORTH 2-4161

JUN 3 1966

June 2, 1966

Carl Rachlin, Esq.
38 Park Row
New York, N.Y. 10038

Re: Hotel Waldorf Astoria Corp.
vs. C. O. R. E.

Dear Mr. Rachlin:

To confirm telephone conversation had with your office on June 1st, we understand you are mailing immediately a check for $200.00 to our office, representing the payment which was due May 28th under the stipulation of settlement dated April 18, 1966.

Failing to receive this check for $200.00, we will promptly enter judgment as soon as the five days grace period has expired. We wish to be cooperative and think you will agree we have been in the past and we do hope that payments will be made in the future with no interruption, and without the necessity of our having to advise you.

Very truly yours,

NORMAN & ALLEN

J. D. Allen

JDA/dg

July 29, 1966

Norman & Allen, Esqs.
160 Broadway
New York, New York

Gentlemen:

Enclosed please find our check (#12921) as per our agreement.

Sincerely,

Carl Rachlin
General Counsel

CR/tp
Encl.

OF ITEMS DESCRIBED BELOW.
PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

| DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| 7/29/66 | On Account as per legal agreement | $200.00 |

---

Carl

This summons which we received today referes to ~~ak~~ an old matter regarding a Gandhi dinner. Apparenetly Eva and Marvin know about it and they had made arrangement with a lawyer, ~~name~~ of Joe Mazur on Broadway, BE 3 5340. Can you take it from here.

Alan

Eva Levy
E25-7019

Core dinner. Bill unpaid.
Over-served on liquor; & Otherwise, bill is accurate. Mazur says: throw in general denial listing him as "of counsel" and give it back to him.
SU

SN- A "general denial"? Isn't there a better way?

Col Raymond Garrity
George Brown
for advice
NA 8 7061
Res

Mailed out
Copy to Attorney
8/27/65

Pete Drennan
Clipper Corp

HOUSE UNAMERICAN ACTIVITIES COMMITTEE - 1965

Box 37
Folder 23

of Wisconsin

Please Retain Original Order

[N.D.]

# HOUSE UNAMERICAN ACTIVITIES COMMITTEE

CORE's problem is basically this: the House Un-American Activities Committee has stated that it wishes to investigate the Ku Klux Klan. Such investigations will most probably include testimony by CORE workers. Even if it doesn't include receiving testimony of CORE members HUAC may very well continue on to investigate CORE and other civil rights groups. Without expressing an opinion of either investigation, they are undesirable at least in that HUAC subpoenas will "expose" our workers and make them vulnerable targets for southern racists. The question is can HUAC be enjoined in advance from investigating either the KKK or CORE? Can HUAC be enjoined from issuing subpoenas to CORE members? Under the assumption that once subpoenas are issued or answered the problem will be "solved" by itself, this memorandum will be limited only to pre-investigation measures. The problem of what committee questions must be answered and which may not be is beyond the scope of this memorandum and may be the subject of a future one if desired.

To restate the problem, what CORE is asking is that a federal court limit the power of discretion of a committee of the Congress of the United States before it has taken any public action whatsoever . In such a situation the courts have uniformly refused to attempt to restrain Congress.

The earliest case on the subject is Mins v. McCarthy 209 F2d 307 (D.C. Cir. 1953). Petitioners had been subpoenaed by a Senate Committee. The matter came on for a hearing on petitioners' motion for leave to file an application for stay. In a per curiam decision denying the motion the court said"

> The Court is of the opinion that where a Committee of Congress has issued a subpoena ad testificandum to a witness to appear at a hearing, without defining the question to be asked, the judicial branch of government should not be enjoined in advance of the holding of the hearing or suspend the subpoena. The rights of the witnesses in respect of any question actually asked at the hearing are subject to determination in appropriate proceedings thereafter id. (emphasis added).

House UnAmerican Activities Committee

In the case of Fischler v. McCarthy, 117 F.Supp. 643 (S.D. N.Y. 1954), the plaintiffs filed a complaint to enjoin the defendant individually and as chairman of a Senate Committee from forcing the plaintiffs to produce certain documents. They also sought a declaratory judgment of "the rights, powers, and duties of the plaintiffs" with respect to the defendant and with respect to their obligations to their employer (The Department of the Army), and also sought to quash or modify the demand and subpoena served on them.

The court held that the case would have to be dismissed for improper venue and lack of jurisdiction but added:

> Apart from the defects of venue and jurisdiction, above noted, which of course in themselves compel dismissal of the complaint, it is clear that the 'type of question' presented and the relief sought is beyond the powers of the Judicial Branch of our Government, at 647.

The court then quoted the Mins decision as above. They went on to emphasize that for a court to take such action would be a violation of the fundamental constitutional principle of separation of powers. Admitting that Congress had broad powers of legislation, the court said that "in the exercise of that function, (making of laws) Congress may inform itself by investigations and in such exercise of legislative authority - it cannot be harrassed by premature interference." at 649. No court may prescribe the limits of Congressional investigation for to do so would be to do violence to the principle of separation of powers. Prior restraint must come, if at all, from Congress itself lest separation of powers become a "meaningless confusion".

In re Motion to Quash Subpoena and Vacate Service 146 F. Supp. 772 (.W.D. Pa. 1956) was an action to do just that and involved a subpoena duces tecum of HUAC. The motion was not served on HUAC and consequently it was not represented in court. The court dismissed the motion for lack of jurisdiction over the Committee though stating that the matter would and perhaps should be disposed of, on this question, the court could not resist inserting dicta which in substance was little different than that of *Fischler* v. *McCarthy*, *supra*.

It is curious, and perhaps not entirely without meaning, that in both of the immediately preceding cases, *Fischler* v. *McCarthy* and *In Re Motion to Quash Subpoena and Vacate Services*, the courts found narrow procedural grounds on which to dismiss, yet both felt compelled to add dicta as to how they would have found if not for the procedural defects. While dicta is often "dismissed" as unimportant, this writer feels that in light of the repeated appearance of virtually identical thoughts and the rather strange sentiments the courts have expressed, the dicta in these cases must be considered seriously as to the probable outcome of my future litigation on the above lines.

*Pauling* v. *Eastland* 109 U.S. App. D. C. 342, 288 F2d 126 (1960), *cert. denied* 364 U.S. 900 (1960) presented a now-familiar situation. The petitioner had been subpoenaed to appear before a Senate Committee. He had previously signed a petition into which the committee was then inquiring . He was ordered by the committee to produce all signatures on the petition as well as the letters of transmittal. Petitioners agreed to provide the former but not the latter. Faced with a choice of complying entirely or risking being cited for contempt of congress he brought this action for injunction or declaratory judgment, praying that the court declare the committee directive void and enjoin its enforcement and possible prosecution. He also moved for an interlocutory stay pendente lite.

On the basis of separation of powers, the court refused to interfere. It seems clear that as a matter of basic general principle a court cannot interfere with or impede the processes of Congress by prescribing anticipatorily the "inquiries". at 344. The court would not ignor the petitioner's rights, but could not intervene until these rights had been violated. There must be a justifiable controversy (such as detention, arrest, indictment or conviction.)

The courts have not been unmindful of the rights of witnesses. They do not say that Congress or Congressional committees may ask anything of any witness and receive an answer. They say that Congress has broad powers of investigation coextensive with its legislative powers. As the courts do not know what Congress will ask of a witness or how it will relate to proposed or potential legislation, they will not even attempt to restrain Congress in advance. If the witness does not wish to answer a question and believes that he has valid grounds for refusing to do so and Congress moves to punish him, only then may his rights be litigated. In effect, the courts are balancing rights with power and duty. On one hand is the overwhelmingly important power and duty of Congress to legislate for the general welfare of the entire nation. On the other are the constitutional rights of the individual witness. The courts do not ignor the latter. They merely think it unreasonable to limit Congress (if they could do so) beforehand on the assumption that the witness' rights may be trampled.

By means of comparison, a case arose in which a Court of Appeals did enjoin a state legislative committee. Jordan v. Hutchesson 323 F2d 597 (4th Cir. 1963). It was a class section by 3 Negro attorneys against a committee of the Virginia State Legislature for equitable relief under 42 USC §§1981 and 1983. They prayed for an injunction from "any further unlawful action to harass and intimidate " the three plaintiff-lawyers and their clients.

This was not a situation in which the plaintiffs merely had been subpoenaed. The entire history of the committee had been one of intimidating Negro citizens from using the courts to end segregation (The court would not bow to the motives of the committee members, nor even the entire legislature, but could and did look to the origin of the state law and the context in which it operated.) The committee had investigated friends and clients of the plaintiffs; urged and asked the former to abandon the latter; raided the offices of the plaintiffs and their clients seeking confidential papers; published statements naming plaintiffs as violators of the law. There was no indication that these practices would be discontinued.

Admitting that the state had broad investigating powers, the court found that the petitioners' activities were protected by the First Amendment. It found that First Amendment rights were being violated and held that neither the State, its Legislature, nor a committee of the Legislature could intrude upon these rights without demonstrating "overriding and compelling interest." It was the duty of federal courts to protect constitutional rights by invasion from state action: "Where there exists the clear possibility of an immediate and irreparagle injury to such rights by state legislative action, the federal courts have exercised their equitable powers including declaratory judgments and injunctions." at 601.

## House Un-American Activities Committee

It is obvious that in the Jordan case, as compared to other cases cited in this memorandum (and the case which CORE would like to litigate), there was a definite and clear intrusion upon constitutional rights. The court took note of the context in which the invasion of rights occurred and found that it was probable that such would continue to occur. In light of the fact that petitioners' rights had and would be infringed upon, the court remanded for injunction.

It should be clear that on the basis of cases already litigated CORE has no chance of receiving an injunction against HUAC in either an investigation of the Klan or of civil rights groups. In all cases the courts have stated that the subpoenaed party's constitutional rights must already have been violated by the committee in question before he may receive relief in a court of equity. The courts freely acknowledge that Congress and state legislatures have broad legislative and investigatory powers which they will not attempt to interfere with until a person's constitutional rights have been infringed.

It must be remembered that in each of the cited cases, the witness had already been subpoenaed. If CORE workers are subpoenaed, for our purposes an attempt to enjoin will already be too late. It is almost impossible to conceive that a claim can be made that a witness' rights will be infringed before it is even known who that witness is or what he will be asked. Of course we are fairly certain that once a witness is identified his rights will be infringed in that he will be less free to carry on civil rights activities, but infrigement will not be at the hands of HUAC and, in any case, infringement will be difficult to prove. The courts have announced that they will not look into the motives of individual committee members. Even if a court was inclined to look at the origins and purpose of HUAC (as the court in Jorden v. Hutchesson, supra looked at the state committee ) such would not reveal that it exists solely to hinder integration or infringe on constitutional rights.

Carl

[illegible]

April 28, 1965

Melvin Wulf, Esq.
Legal Director, ACLU
156 Fifth Avenue
New York, New York

Dear Mel:

I told you briefly that we are anxious to make a legal attack on the newest HUAC investigation which allegedly will be against the Klan, but we feel sure will end up against CORE because Willis and the Senate and House whips are all Louisianans.

Would ACLU care to join CORE in an attack which would be in federal court possibly the District of Columbia? The theory might be that not only is there no legitimate legislative purpose and the hearings would only irreparably ruin reputations (see Jimmy Breslin today) but by exposing CORE members they are really endangering their lives.

I would like your thoughts since this is terribly important.

With personal regards.

Cordially,

Carl Rachlin
General Counsel

CR:JG

cc: Collins Douglas & Elie, Esqs.
Henry Schwartzschild
George Wiley ✓
Richard Haley
David Dennis

**Lawyers Constitutional Defense Committee, Inc.**
**Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010**

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APR 30 1965

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HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

***Executive Secretary***
HENRY SCHWARZSCHILD

April 29, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N.Y. 10038

Dear Carl:

In re the HUAC investigation of the Klan: I agree with you, but I am concerned (as you must be) about the impression and effect that any intervention by CORE or LCDC would have on the movement. Perhaps we should urge the ACLU to front for us...

In any case, as Mel says: let's talk about it. I'll see you in New Orleans on Thursday, May 6, first thing, in Dick Haley's office, if not before.

Cordially,

Henry Schwarzschild
Executive Secretary

HS:c

P.S. Remind me to fill you in on my lunch with Jimmie Wechsler re SNCC and on forthcoming overtures to LCDC by the NLG!

CC: Collins, Douglas & Elie, Esqs.
Melvin L. Wulf, Esq.

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April 29, 1965

APR 30 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, N. Y.

Dear Carl:

The idea of an action against HUAC is, of course, an engaging one. We may have some problems about appearing on behalf of CORE without doing the same for the Klan, but perhaps that is a premature apprehension.

I think we must sit down and talk it over. I am at your disposal.

Sincerely yours,

Melvin L. Wulf
Legal Director

cc: Henry Schwarzschild
Collins, Douglas & Elie

Washington Office — 1101 Vermont Avenue, N.W., Washington, D.C. 20005; Lawrence Speiser, *Director*; Julie N. Barrows, *Executive Assistant*
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July 3, 1965

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

Dear Mr. Rachlin:

Pursuant to Mr. Coopersmith's long distance call on your behalf, I send to you herewith mimeographed copies of our complaint in the Stamler matter in the United States District Court for the Northern District of Illinois in which we sought unsuccessfully to enjoin the holding of the Chicago HUAC session. However, more importantly, we sought declaratory judgment that the hearings to be convened on May 25, 1965 were void; that the subpoenaes served were likewise void, and that the Legislative Reorganization Act of 1946 insofar as it incorporates Rule XI of the Rules of the House of Representatives establishes HUAC violated the Constitution of the United States.

We regarded the injunction portion of the complaint as very much a "long shot" and anticipated the rejection of our motion for injunction that followed. Regarded as more serious and sound, however, the attack upon the validity of the Committee itself. We are proceeding diligently with the appeal we filed to the Court of Appeals of the Seventh Circuit.

The course of events before the Chicago HUAC hearings fully confirmed our representations respecting the Committee outlined in our complaint.

Very truly yours,

Albert E. Jenner, Jr.

AEJ:hw
Encls.

[enclosed, Jenner to Raehlin, 1965, July 3]

## STATEMENT OF DR. JEREMIAH STAMLER
## and YOLANDA F. HALL

Gentlemen, I adopt and confirm all that my counsel, Mr. Jenner, has stated. I tell you that I am now and I have always been a loyal American citizen. My entire adult life has been one of loyal and devoted effort -- good work -- for our country, its people, and their well being, particularly in matters of improving health. I take second place to none in this regard. However, on advice of my counsel, I respectfully decline to give any information or testimony to or further to cooperate with this Committee. If and when the litigation which I have instituted is terminated adverse to my position, I will return before this Committee or an authorized subcommittee thereof in accordance with the subpoena served on me. At present, however, and for the reasons and on the grounds stated by Mr. Jenner and those stated in my complaint filed by me on Monday in the United States District Court, I respectfully decline to answer any further questions that may be put to me or otherwise further to participate in these proceedings.

I have nothing to hide. I take this position -- in my own behalf and that of all Americans -- as a matter of principle and conscience, in order to test once and for all the validity of the kind of proceedings which have been held here during the past three days.

[enclosed, Jenner to Rachlin, 1965, July 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JEREMIAH STAMLER, M.D. and )
YOLANDA F. HALL, )
)
Plaintiffs, )
vs. ) No.
)
HON. EDWIN E. WILLIS, HON. JOHN )
M. ASHBROOK, HON. DEL CLAWSON, )
HON. JOE R. POOL, HON. CHARLES L. )
WELTNER, HON. WILLIAM M. TUCK, )
HON. RICHARD H. ICHARD, HON. )
GEORGE F. SENNER, JR., and HON. )
JOHN H. BUCHANAN, JR., individually )
and as Chairman and Members of the )
Committee on Un-American Activities )
of the United States House of )
Representatives, )
)
Defendants. )

## COMPLAINT

Plaintiffs Jeremiah Stamler, M.D. and Yolanda F. Hall submit the following complaint against defendants Hon. Edwin E. Willis, Chairman, and Hon. John M. Ashbrook, Hon. Del Clawson, Hon. Joe R. Pool, Hon. Charles L. Weltner, Hon. William M. Tuck, Hon. Richard H. Ichard, Hon. George F. Senner, Jr., and Hon. John H. Buchanan, Jr., Members, of the Committee on Un-American Activities of the United States

House of Representatives:

1. Plaintiff Jeremiah Stamler, M.D. is a citizen of the State of Illinois and of the United States. He has been licensed to practice medicine since 1948. He is and has been for some years the Executive Director of the Chicago Health Research Foundation and the Western Hemisphere Editor of the "Journal of Atherosclerosis Research." He is a member and past and present officer of many professional and scientific societies. He is the author of several scientific books and numerous scientific articles on the subject of diseases of the heart and blood vessels. He is and has been the recipient of many long-term research grants for local and national scientific studies, from the National Institutes of Health of the United States Public Health Service, the American Heart Association, the Chicago Heart Association, and other granting agencies. On May 21, 1965 he received the Albert Lasker Award in Medical Journalism from the Albert and Mary Lasker Medical Foundation, for his co-authorship of a series of articles dealing with the prevention of heart attacks. He is and has been for some years the Director of the Division of Adult Health and Aging, and the Director of the Heart Disease Control Program, both of the Chicago Board of Health, Chicago, Illinois. He sues

individually and on behalf of all other citizens similarly situated.

2. Plaintiff Yolanda F. Hall is a citizen of the State of Illinois and of the United States. She holds a Master of Science degree awarded by the Department of Home Economics of the Illinois Institute of Technology. She is and has been for some years a Research Nutritionist for the Heart Disease Control Program of the Chicago Board of Health and for the Chicago Health Research Foundation. She sues individually and on behalf of all other citizens similarly situated.

3. Defendant Hon. Edwin E. Willis is a citizen of the State of Louisiana. He is made a party individually and as Chairman of the Committee on Un-American Activities of the House of Representatives of the United States House of Representatives (hereafter "House Un-American Activities Committee"). Defendants Hon. Joe R. Pool, a citizen of the State of Texas, Hon. Charles L. Weltner, a citizen of the State of Georgia, Hon. John M. Ashbrook, a citizen of the State of Ohio, Hon. Del Clawson, a citizen of the State of California, Hon. William M. Tuck, a citizen of the State of Virginia, Hon. Richard H. Ichard, a citizen of the State of

Missouri, Hon. George F. Senner, Jr., a citizen of the State of Arizona, and Hon. John H. Buchanan, Jr., a citizen of the State of Alabama, are made parties individually and as members of the House Un-American Activities Committee.

4. The jurisdiction of the Court arises under 28 U.S.C. §§ 1331, 1332, 1343 (3) and (4), 2201, 2202, 2282, 2284; 42 U.S.C. § 1983; and under the Constitution of the United States and in particular under Article I, Section 9, Clause 3, Article III, and the First, Fifth, Ninth, Tenth, and Fourteenth Amendments thereto.

5. The amount in controversy, exclusive of interest and costs, exceeds $10,000.

6. Defendants and each of them, acting in concert and under the color of an unconstitutional Act of Congress and Resolution of the House of Representatives of the Congress of the United States, set forth below, together with other persons acting under the color of laws, whose identities are presently unknown to plaintiffs, have undertaken and endeavored to subject plaintiffs and others similarly situated to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

7. Pursuant to the aforesaid undertaking and endeavor, defendants have caused to be issued and served upon plaintiffs certain subpoenas, copies of which are attached hereto as Exhibits 1 and 2, which direct plaintiffs, and each of them, to appear before the House Un-American Activities Committee, or a duly appointed subcommittee thereof, to be convened in Chicago, Illinois, on May 25, 1965, at 10:30 A.M.

8. Defendants have taken the aforesaid action under and pursuant to the Legislative Reorganization Act of 1946, 60 Stat. 812, 828 (U.S. Code Congressional Service, 1946, p. 793), which embodies Rule XI of the Rules of the House of Representatives of the United States establishing the charter of the House Un-American Activities Committee. Rule XI of said Act provides in pertinent part:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is

> instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

9. Rule XI of said Act is illegal and void as applied to plaintiffs, and as utilized by defendants and their predecessors in the past, in that it violates the Constitution of the United States and in particular the First, Fifth, Ninth and Tenth Amendments thereto, for the following reasons, among others:

(a) Rule XI violates the First and Fifth Amendments to the Constitution of the United States because it is unduly vague, uncertain and broad. Its overbroad sweep inhibits and deters the exercise by citizens of the United States of the rights of freedom of speech, press, assembly, privacy, to remain silent, and of association, in violation of the First Amendment to the Constitution of the United States. The dragnet sweep of the provisions of Rule XI of said Act violates the command of the First Amendment that

Congress shall make no law abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(b) It appears from both the origin of Rule XI, and the setting within which the Committee has in the past operated pursuant to its charter, that Rule XI purports to establish a general authority in the House Un-American Activities Committee publicly to expose the private affairs of individuals without justification in terms of the legitimate investigative functions of the Congress, all in violation of the Constitution of the United States, and beyond and in excess of any powers granted to the Congress by the Constitution of the United States.

(c) Rule XI has authorized the creation of a governmental mechanism with the sole purpose and objective of forcing public disclosure of beliefs, opinions, expressions and associations of private citizens which may be unorthodox or unpopular, resulting in public stigma, scorn and obloquy, all beyond any powers granted to the Congress by the Constitution of the United States.

(d) Rule XI purports to authorize such a sweeping, unlimited and all-inclusive compulsory examination of witnesses in the constitutionally protected areas of speech, press, petition and assembly, that it violates the procedural requirements of the Due Process Clause of the Fifth Amendment to the United States Constitution.

(e) The delegation of authority by Congress to the House Un-American Activities Committee contained in Rule XI is so vague, ambiguous and uncertain that it cannot support or authorize investigations by the House Un-American Activities Committee which affect or deter the citizens of the United States in the exercise of their rights of freedom of speech, press, petition and assembly, as guaranteed by the First Amendment to the federal Constitution.

(f) Rule XI purports to sanction a usurpation of the functions of the executive and judicial branches of the national government, in violation of the principle of separation of powers which underlies the Constitution of the United States.

(g) Rule XI of said Act violates the prohibition against Bills of Attainder set forth in Article I, Section 9, Clause 1 of the Constitution in that it authorizes and provides for legislative punishment.

(h) Rule XI violates Article III of the Constitution in that it sanctions and authorizes the imposition of punishment for the exercise of rights otherwise guaranteed by the First Amendment.

10. (a) Under color of said Act and Rule, defendants have caused said subpoenas to be issued to plaintiffs (Exhibits 1 and 2) commanding them to appear before the said Committee at a public hearing on May 25, 1965, for the purpose of embarrassing, harassing and intimidating plaintiffs and to deter plaintiffs from the exercise of their rights, privileges and immunities as citizens of the United States, and in particular their rights to freedom of belief, speech, press, assembly and association guaranteed by the First Amendment.

(b) For several years, plaintiff Yolanda Hall has been active in Chicago, Illinois, and especially in the area known as Austin, both privately and in conjunction with various civic organizations, in efforts to secure for Negro citizens the rights guaranteed to them by the federal Constitution. Plaintiffs allege upon information and belief that certain persons, some of whom are named in the exhibits attached hereto, and some of whose names and identities are unknown to plaintiffs, have induced defendants to issue subpoenaes to plaintiffs, not for any authorized or legitimate legislative purpose or investigation, but solely in order to punish, embarrass and harass her for said activities, and in order to punish, embarrass and harass plaintiff Stamler, who hired plaintiff Hall and who is her immediate superior, and to intimidate and deter plaintiff Hall and others who have carried on such activities, both in Chicago and elsewhere in the United States, from carrying on those activities in the future.

11. There has been no specification or information given to plaintiffs, and none is contained in the subpoenaes attached as Exhibits 1 and 2, as to the purposes or scope of the hearings to be held before defendants on May 25, 1965, or as to the matters which defendants intend or desire to investigate. Therefore, if and when plaintiffs are interrogated by defendants, plaintiffs will be unable to determine (i) whether the investigation is relevant or germane to any authorized or legitimate legislative function, or (ii) issues

of relevancy and materiality, or (iii) whether there is so compelling a need for plaintiffs to reply to defendants' questions that infringement of plaintiffs' constitutional rights is justified. Plaintiffs will therefore be unable to exercise intelligently and effectively the rights guaranteed to plaintiffs by the Constitution of the United States.

12. (a) The purported subpoenaes issued to the plaintiffs, and the hearings to be convened by the House Un-American Activities Committee on May 25, 1965 at Chicago, Illinois, are illegal and void in that defendants have violated the Rules of Procedure of the Committee, and in particular Rule 26(m) and Rule XVI thereof, which provide as follows:

> "(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;"
>
> "XVI. No Member of the Committee or staff shall make public the name of any witness subpenaed before the Committee or Subcommittee prior to the date of his appearance."

(b) In violation of Rule 26(m), said subpoenaes are returnable at a place which is open to the general public.

(c) In violation of Rule XVI, the names of plaintiffs and other persons subpoenaed to appear before the House Un-American Activities Committee on May 25, 1965, have been released by defendants, their agents, employees or attorneys, or persons acting in concert with them, to certain public news media, including newspapers in and around Chicago, Illinois, resulting in the publication of plaintiffs' names, and photographs of plaintiff Stamler, in newspapers in and around Cook County, Illinois, representative samples of which are attached hereto as Exhibits 3 et seq. This publicity has resulted in great harm to plaintiffs and their families in their professional and private lives, and to their professional and private reputations.

13. The extensive publicity which has been given to the activities of the House Un-American Activities Committee, and especially the adverse publicity and public scorn which has been visited upon those who have resisted, opposed, failed to cooperate with, or questioned the motives or

procedures of the House Un-American Activities Committee, have caused many citizens of the United States, including plaintiffs, to fear being subpoenaed by the House Un-American Activities Committee, and in order to avoid the risk of being subpoenaed, to forego the exercise of their right of freedom of speech, press, assembly, petition, and other rights and privileges guaranteed to all citizens by the First Amendment to the federal Constitution. Unless this Court restrains defendants as requested herein, (i) defendants, their successors and agents will continue to harass, intimidate and defame citizens, including plaintiffs, and (ii) citizens, including plaintiffs, will become more and more fearful of risking the displeasure of or being subpoenaed by the House Un-American Activities Committee, and (iii) with the resulting chilling and deterent effect upon the valuable constitutional rights of all citizens, and the loss to society of the benefits of fearless and unfettered expression of ideas and beliefs.

14. The hearings to be held at Chicago, Illinois beginning on May 25, 1965 are not intended to and in fact will not advance any legitimate legislative purpose or investigation. The purpose, intention and effect of the efforts

of defendants to enforce this Act and Rule is to deter, intimidate, hinder and prevent plaintiffs and persons similarly situated in Illinois and throughout the nation from exercising the constitutional rights to freedom of belief, speech, press, privacy and association guaranteed to them by the First Amendment to the Constitution of the United States, to hold up to public obloquy and scorn all those who resist or refuse to cooperate with defendants or who question defendants' motives or the propriety of defendants' procedures, and to embarrass, punish and deter persons whose political, economic, philosophical and other views, ideas and beliefs do not coincide with defendants, and to embarrass, punish and deter persons who have actively attempted to secure equal rights for Negro citizens and other minority groups in the United States. Unless this Court restrains the operation and enforcement of said Rule, plaintiffs and all persons similarly situated will risk and suffer irreparable and immediate loss or substantial impairment of fundamental rights as a result of the chilling effect of the enforcement and operation of this Act and Rule upon the exercise of First Amendment rights.

15. Defendants have in the past caused and they threaten to continue in the future to cause the utilization of federal criminal statutes, in particular 2 U.S.C. § 192, to compel citizens to disclose publicly their beliefs, opinions, expressions and associations, and to bring adverse publicity and public derision to those who fail or refuse to cooperate with defendants, all in violation of the Constitution of the United States and in particular the First and Fifth Amendments thereto.

16. (a) Plaintiffs fear that if they appear before the House Un-American Activities Committee pursuant to said subpoenaes, and decline to respond to defendants' questions for the reasons stated herein, they will be subjected to prosecution for criminal contempt with resulting adverse publicity, public obloquy, and injury to plaintiffs and their families in their professional and private lives.

(b) Plaintiffs fear that if they appear before the House Un-American Activities Committee pursuant to said subpoenaes, they will be unable to intelligently and effectively protect their constitutional rights, because they will be unable to determine whether defendants' inquiries are germane and material to the legitimate legislative purposes, if any, of the House Un-American Activities Committee, or impinge upon plaintiffs' constitutional rights, and plaintiffs will therefore subject themselves to multiple, lengthy and costly criminal contempt proceedings, all of which will result in irreparable harm to plaintiffs and their families, both financially and in their professional and private reputations.

17. Furthermore, unless the enforcement and operation of said Act and Rule is restrained by this Court, immediate and irreparable injury and harm may be done to plaintiffs and to the entire nation in that the effect of the enforcement of the aforesaid subpoenaes against plaintiffs will be to interfere with, injure, undermine and destroy invaluable medical research programs in the area of the prevention of heart disease presently under the control and direction of plaintiff Stamler, who is assisted by plaintiff Hall.

18. No previous application for this relief has been made.

WHEREFORE, plaintiffs pray:

1. That pursuant to 28 U.S.C. §§ 2282 and 2284, a three-judge court be immediately convened to hear and determine this proceeding.

2. That a permanent injunction issue:

(a) Restraining defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from the enforcement, operation or execution in any way whatever of the Legislative Reorganization Act of 1946, 60 Stat. 817, 828, insofar as that Act incorporates Rule XI of the Rules of the House of Representatives establishing the Committee on Un-American Activities of the House of Representatives.

(b) Restraining defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from impeding, intimidating, hindering and preventing plaintiffs from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States.

(c) Restraining defendants and each of them, their agents, employees, and attorneys, and all others acting in concert with them, and their successors, from attempting to issue subpoenaes, hold hearings or take any action whatsoever under the purported authority of the Legislative Reorganization Act of 1946, 60 Stat. 817, 828, or House Rule XI of the Rules of the United States House of Representatives.

3. That this Court enter a judgment declaring that the Legislative Reorganization Act of 1946, 60 Stat. 817, 828, insofar as it incorporates Rule XI of the Rules of the House of Representatives establishing the Committee on Un-American Activities of the House of Representatives, violates the Constitution of the United States and is therefore void and of no effect.

4. That this Court declare the hearings to be convened by defendants on May 25, 1965 at Chicago, Illinois are illegal and void.

5. That this Court enter a judgment declaring that the subpoenaes served on plaintiffs (Exhibits 1 and 2) are void, and that plaintiffs need not comply with those subpoenaes.

6. Pending the hearing and determination of this action, this Court enter an interlocutory injunction restraining defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors, from (i) convening or proceeding with the hearings scheduled to begin on May 25, 1965 at Chicago, Illinois, (ii) from proceeding upon or enforcing in any way the subpoenaes issued to and served upon plaintiffs (Exhibits 1 and 2), including any proceeding to enforce those subpoenaes pursuant to the criminal provisions of Title 2 U.S.C. Section 192, and (iii) from seeking or receiving in any hearings of the House Un-American Activities Committee, wherever held, any evidence or testimony concerning plaintiffs or their immediate families; and

7. They be given all other relief as the Court may deem appropriate.

Albert E. Jenner, Jr.

Thomas P. Sullivan

Lael F. Johnson

Of Counsel:
Raymond, Mayer, Jenner & Block
135 S. LaSalle
Chicago, Illinois

Arthur Kinoy
William M. Kunstler
Kunstler, Kunstler & Kinoy
511 Fifth Avenue
New York, New York

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

AFFIDAVIT

Jeremiah Stamler on oath states that the matters stated in this Complaint are true, except those matters alleged therein to be made upon information and belief, which matters he is informed and believes are true.

Jeremiah Stamler, M.D.
Jeremiah Stamler

Signed and sworn to before
me May 22, 1965.

Irene G. Costello
Notary Public

Original

UNITED STATES OF AMERICA

# Congreſs of the United States

To Jeremiah Stamler

, GREETING:

PURSUANT to lawful authority, YOU ARE HEREBY COMMANDED to be and appear before the Committee on Un-American Activities of the House of Representatives of the United States, or a duly appointed subcommittee thereof, on Tuesday, May 25, 1965, at 10:30 o'clock, a.m., ~~at their Committee Room~~ U.S.Court House & Federal Office Bldg., Ceremonial Court Room, 25th Floor, 219 S. Dearborn Street, Chicago, Ill., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee.

YOU ARE HEREBY COMMANDED to bring with you and produce before said committee, or a duly authorized subcommittee thereof, the following:

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To NEIL E. WETTERMAN, to serve and return.

GIVEN under my hand this 6th day of May, in the year of our Lord, 1965.

E E Willis

*Chairman—Chairman of Subcommittee—Member Designate of the Committee on Un-American Activities of the House of Representatives.*

16—71627-1

**If you desire a conference with a representative of the Committee prior to the date of the hearing, please call or write to: Staff Director, Committee on Un-American Activities, Washington 25, D.C., Telephone: CApitol 4-3121—Ext. 3051.**

Exhibit 1

# House Unit Sets Red Probe Here

The House un-American activities committee has scheduled public hearings here for May 25, 26, and 27 to investigate reports of a slight resurgence in Communist activities here.

It was learned that 11 persons, including several city employes, have been subpenaed to testify in the hearings, to be held in chambers on the 25th floor of the federal courts and office building.

It was also learned that closed hearings into the Ku Klux Klan may begin in Washington in two weeks to set the stage for a formal probe of the Klan by HUAC. The investigative hearings are separate from the formal probe.

While four of the committee's nine members are from the south, HUAC hopes its hearings will not be construed as a drive against the civil rights movement, a source close to the committee said.

### Quiz on Infiltration

Rather, the members wish to learn to what extent Communists, whether Moscow or Peking oriented, might be infiltrating the rights movement for their own purposes.

It is hoped that "friendly witnessess" rounded up by HUAC staff members earlier this year will shed light on what effects the ideological split between Russia and China has had on the Communist movement in the United States.

Washington sources said these witnesses have broken both from the regular, Russian-oriented Communist party of the United States and the newer Progressive Labor Movement, a faction favoring Chinese interpretations of Marxism.

### Continuation of Hearings

They described the hearings here as a continuation of hearings last year in Minneapolis and in Buffalo, in which activities of the P. L. M. were detailed before the committee for the first time.

The P. L. M., the committee was told, apparently broke from the Communist party of the United States after the United States Supreme court ruled in 1961 that the regular party would have to register its leaders under the internal security act.

The regular party followed its plan of reducing national leadership to but three persons and ignoring the order to register.

The dissident faction wanted to dissolve the party and reform it under a new name, thus avoiding the need to register.

Since then, the P. L. M. has become an aggressive band. While the more orthodox Communists have parroted the Moscow line of peaceful coexistence, P. L. M. members have taken sides with Peking's belief that war is inevitable in the struggle for power.

Chicago American
May 12, 1965

Exhibit 3

# Un-American Activities Unit Subpenas 11 in Chicago Area

BY JAMES S. LEWIS

Eleven Chicago area persons have been subpenaed to appear before the House Un-American Activities Committee here May 25th. They will meet Thursday night to decide whether they will disclose their names ahead of time.

The Chicago Committee to Defend the Bill of Rights, 431 S. Dearborn, has sent telegrams to 11 Illinois congressmen asking them to work toward canceling the HUAC hearings here.

None of the persons subpenaed are members of the Chicago Committee, in which membership is limited to a board of directors of 40, according to Richard Criley, secretary.

**THE SUBPENAS** were served on persons active in racial integration and peace activities, Criley said. The group reportedly includes several suburbanites, three Negroes and the manager of a congressmen were sent over

The telegrams to the Illinois Loop bookstore.

the signature of the Rev. William T. Baird, executive director of the Chicago Committee, pastor of the Essex Community Church, 7400 S. Blackstone, and a member of The Woodlawn Organization.

The telegram read:

"We urge you to act to cancel the projected May 25 hearings in our community of the segregationist-dominated House Un-American Activities Committee.

"If held, these hearings will result in a guilt-by-association witch hunt against persons working for integration and peace."

**UNIVERSITY** of Chicago Prof. Robert J. Havighurst is chairman of the Chicago Committee.

The vice chairmen are Northwestern University Prof. Curtis Mac Dougall, Rabbi Arnold Jacob Wolf of Highland Park and the Rev. Dr. Victor Obenhaus of the Chicago Theological Seminary.

The meeting of those subpenaed will not be open to the public. The House committee, which has a 5-4 majority of Southerners, was voted $50,000 last month to investigate the Ku Klux Klan. Its chairman is U.S. Rep. Edwin E. Willis (D-La.)

Criley said that should efforts to cancel the May 25 hearings here fail, "we will prepare a warm welcome for them." He said that he understands that students will picket any HUAC hearings held here.

Chicago Daily News
May 12, 1965

Exhibit 4

12 CHICAGO SUN-TIMES, Thurs., May 13, 1965

# House Unit To Probe Red Activity In Illinois

The House Committee on Un-American Activities announced Wednesday it will begin hearings May 25 in Chicago on Illinois Communist activity.

Chairman Edwin E. Willis (D-La.) said the hearings in the Federal Building will probe organization, tactics, strategy and objectives of the Communist Party in its Illinois district.

The hearings will be part of a series to appraise the 1950 Subversive Activities Control Act.

The Rev. William T. Baird, executive director of the Chicago Committee to Defend the Bill of Rights, immediately protested the hearings. He sent telegrams to the Illinois Congressional delegation, asking that the HUAC hearings be canceled.

"If held, these hearings will result in a guilt by association witch-hunt against persons in the Chicago area working for integration and peace," the Rev. Mr. Baird wired.

Chicago Sun Times
May 13, 1965

Exhibit 5

# Probe of Reds in Chicago City Hall Set for May 25

[Chicago Tribune Press Service]

Washington, May 12 — Communist infiltration of a city hall department in Chicago will be explored at forthcoming hearings of the House committee on un-American activities, investigators said today.

Willis

Chairman Edwin E. Willis [D., La.] announced that he and four committee members will hold public hearings beginning May 25 in the United States courthouse and federal office building in Chicago.

**Expect Reluctant Witnesses**

The nature of the evidence to be presented by both friendly and adverse witnesses was not disclosed but it was said to concern a stepping up of Communist party activities in the Chicago area which is a part of the national picture.

Some of the witnesses to be called are expected to refuse to testify on the ground of possible self-incrimination, while others will relate communist penetration in several fields, including local government.

The hearings, Willis said, would concern "the structure and organization, major areas of concentration, strategy and tactics, and the general extent, character, and objectives of the United States Communist party in relation to the Chicago and Illinois district of the party."

The other committee members are Representatives Joe R. Pool [D., Tex.], Charles L. Weltner [D., Ga.], John M. Ashbrook [R., O.], and Del Clawson [R., Cal.].

Hearings will be held later in other states.

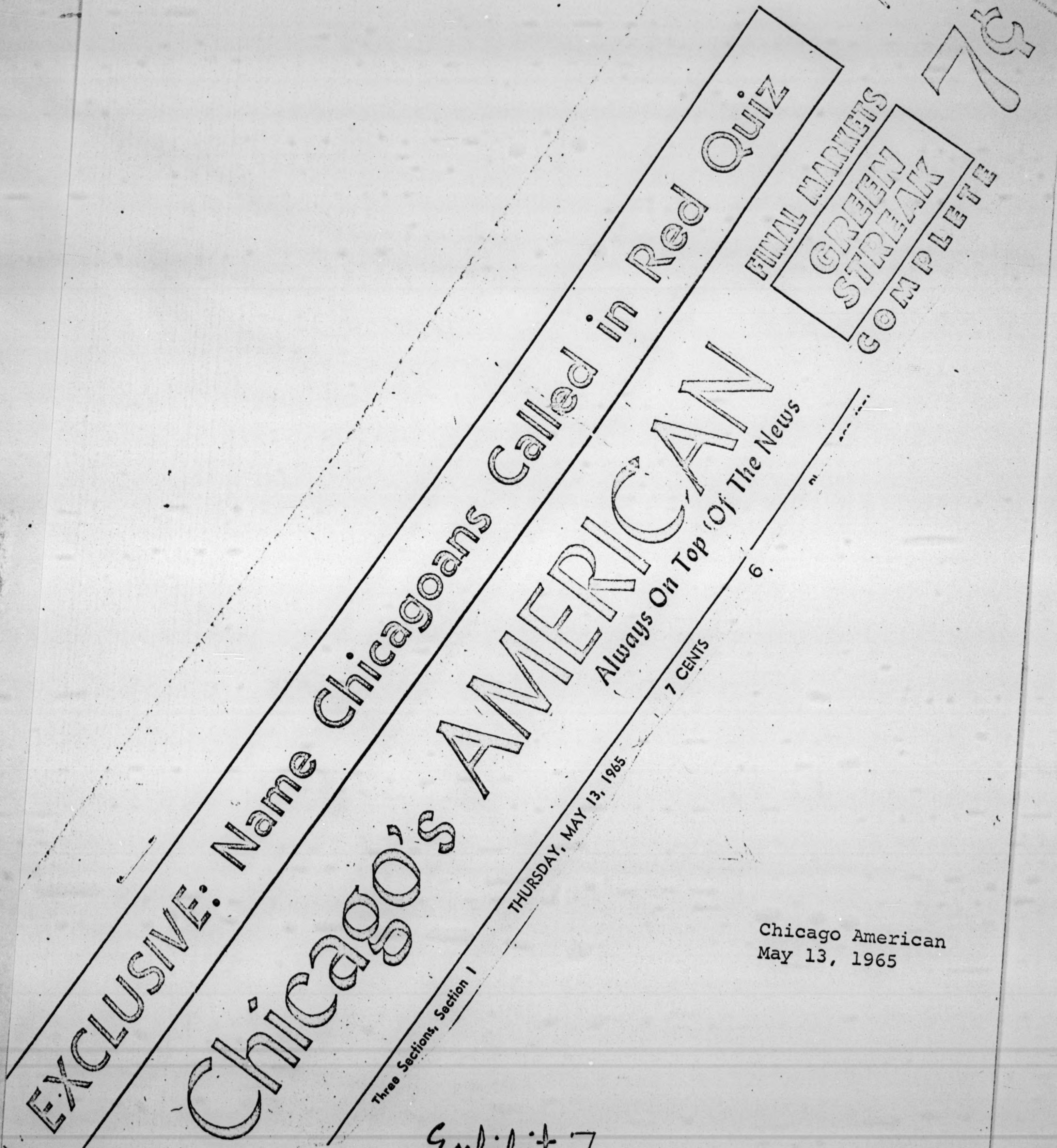
**12 WITNESSES CALLED**

Richard Crowley, secretary of the Chicago Committee to Defend the Bill of Rights, 431 S. Dearborn st., said that the committee, a branch of the national committee to abolish the House un-American activities committee, has learned that 12 Chicagoans were subpenaed Tuesday to testify. Crowley said he has talked to most of those receiving subpenas and intends to make their names public Friday.

The Rev. William T. Baird, committee executive director, wired congressmen denouncing the hearings as "a guilt by association witchhunt against persons working for integration and peace."

Chicago Tribune
May 13, 1965

Exhibit 6



# EXCLUSIVE: Name Chicagoans Called in Red Quiz

**Chicago's AMERICAN**

Always On Top Of The News

Three Sections, Section 1

THURSDAY, MAY 13, 1965

7 CENTS

6

FINAL MARKETS

GREEN STREAK

COMPLETE

7¢

Chicago American
May 13, 1965

Exhibit 7

EXCLUSIVE

# List Chicagoans to Face Red Quiz

## Report Dr. Stamler, 11 Others Subpenaed

Dr. Jeremiah Stamler, 45, internationally renowned heart research specialist with the Chicago Board of Health, has been subpenaed to testify before the House Committee on Un-American activities.

**DR. JEREMIAH STAMLER**
**Heart researcher.**

The subpena was issued to Dr. Stamler and 11 other Chicago figures this week.

CHICAGO'S AMERICAN reported exclusively Tuesday that the congressional committee would open three days of public hearings on communist activities here May 25. The hearings are to be held on the 25th floor of the United States courthouse and federal office building, 219 S. Dearborn st.

This committee traditionally subpenas persons both pro- and anti-Communist to obtain information.

A health department assistant to Stamler, Mrs. Yolanda Hall, 43, also has been subpenaed. Stamler's wife, Rose, works with him at the board of health on a part-time basis.

### News to Mayor Daley

Mayor Daley said of the looming investigation:

"This is news to me. The city has a policy of getting as much information as it can about top city employes. We screen our top people.

"I am going to check with Thomas S. McInerney, head of the department of investigation, and with the Chicago delegation in Congress.

"If there is anyone in the city government carrying on activities which are contrary to our government, he will be removed immediately."

Just why Stamler was subpenaed is unclear. Contacted by CHICAGO AMERICAN in Washington, where he is attending a convention on heart ailments, Dr. Stamler said:

"I've no public information to divulge at this time. Until I have an opportunity to get home and catch my breath, I'm not going to say anything about this.

"I am a responsible person and a responsible American."

Chicago American
May 13, 1965

Exhibit 8

"Technically, I do the hiring, but I generally go along with the recommendations of my subordinates with regard to hiring practices.

"Stamler and his staff do research work on cardio-vascular conditions, and in the fields of cancer and diabetes.

### No Policy Connections

"Neither he nor any of his staff members is involved in planning, policy making, or civil defense planning for the board of health.

"Dr. Stamler was hired in April, 1958, by my predecessor, Dr. Herman Bundesen. I became health commissioner in March, 1960.

"I have not had cause to question Dr. Stamler's competence or his work. He is internationally renowned."

### Earns $20,000 Annually

Andelman said that Stamler earns $20,322 a year; that Mrs. Hall is a research assistant and that Stamler's wife, Rose, also is a salaried health department worker. Both women earn $9,300 a year, Andelman said.

News that Dr. Stamler had been subpenaed comes with an announcement from New York City that he has been named co-winner with Alton Blakeslee of the Associated Press of the 16th annual Albert Lasker Medical Journalism award in the newspaper field, for their series entitled, "Your Heart Has Nine Lives."

### Holds 2 Titles

The award includes a check for $2,500, an engraved citation, and a gold statuette of the Winged Victory of Samothrace, symbolizing victory over death and disease.

Officially, Dr. Stamler holds two titles with the board of health — director of the heart disease control program, and of the division of adult health and aging.

A major part of this second division is a 10-year study, now 5 years old, called the coronary prevention evaluation program, in which Stamler and his staff are studying the relationship between diet and heart attacks.

One major feature of the study so far has been the indication that high protein diets where vegetable fats are substituted for animal fats seem to reduce body weight and the cholesterol rate in the blood.

### New York Graduate

Stamler was born in 1919, and received his degree in medicine from the State University of New York College of Medicine at New York City, Brooklyn. He was licensed to practice medicine in Illinois in 1948 and certified by the National Board of Medical Examiners in 1947.

Stamler is a member of the Central Society for Clinical Research, and of the American Society for Clinical Investigation.

He and his wife live at 1332 Madison avenue park.

The chairman of the House Committee on Un-American Activities is Rep. Edwin E. Willis [D., La.]. He announced that he and four colleagues would hold the hearings in Chicago.

### Others At Hearings

The others are Representatives Joe R. Pool [D., Tex.], Charles L. Weltner [D., Ga.], John M. Ashbrook [R., O.], and Del Clawson [R., Cal.].

Previous hearings have been held in Minneapolis June 24-26, and in Buffalo, April 29-30, 1964. Other hearings will be held later.

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Chicago American
May 13, 1965
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of Exhibit 8

# List Chicagoans Called in Red Inquiry Here

BY DON SULLIVAN

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### Aid Refused Position

His aid, Mrs. Hall, in 1949 was refused a teaching position with the Chicago Board of Education on grounds of Communist connections.

Richard Crowley, secretary of the Chicago Committee to Defend the Bill of Rights, announced that he intends to make public tomorrow the names of those subpoened. This announcement provoked the revelation by Chicago's American of the names.

The other subpenaed are:

Milton M. Cohen, 50, of 5428 Kimbark av., an avowed Communist whom 1937 fought with the Abraham Lincoln brigade on the side of the Spanish Loyalists in 1937. In 1946, Cohen taught a course called "Fundamental Principles of Marxism" with Claude Lightfoot, executive secretary of the Communist party in Illinois, at the Abraham Lincoln school.

Dorothy M. Hayes, 56, of 5511 Everett av., a social worker. In Oct., 1960, she signed a petition to President Kennedy protesting the internal security act of 1950.

Wilberforce Jones, of 3827 Michigan av., a worker in the General Motors plant in La Grange, and a former steward in the United Auto Workers, AFL-CIO.

Versta Miller, of 3851 Ellis av.

Leon Joy Jennings, of 6444 Eberhart av., a member of AFL-CIO United Auto Workers Local 734.

David Englestein, 61, of 737 Belden av., employed at the Avalon Truck and Auto Parts company, 7370 South Chicago av., since 1948. He is a naturalized citizen, having come to the United States from Montreal in 1930.

Helen Fotine Queen, of 5017 Quincy st., is the wife of Danny Queen, Illinois youth director for the Communist party.

Louis Diskin, manager of the Modern Book store, 56 E. Chicago av., identified by the House Un-American Activities committee as "the party outlet for Communist party propaganda and literature in that area." Diskin is one-time New York chairman of the Labor Youth League, formerly known as the Young Communist League.

Benjamin Friedlander, 55, of 5345 Kimbark av., a chemist.

### Surprise to Andelman

Dr. Samuel L. Andelman, Chicago health commissioner, said of Dr. Stamler's subpena:

"This comes as a complete surprise to me. Dr. Stamler is a researcher for my department, and he has about 40 persons working for him.

Chicago American
May 13, 1965

Exhibit 9

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[Continued on page 12, col. 4]

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Chicago American
May 13, 1965
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"If held, these hearings will result in a guilt-by-association witch hunt against persons working for integration and peace."

**UNIVERSITY** of Chicago Prof. Robert J. Havighurst is chairman of the Chicago Committee.

The vice chairmen are Northwestern University Prof. Curtis MacDougllas, Rabbi Arnold Jacob Wolf of Highland Park and the Rev. Dr. Victor Obenhaus of the Chicago Theological Seminary.

The meeting of those subpenaed will not be open to the public. The House committee, which has a 5-4 majority of Southerners, was voted $50,000 last month to investigate the Ku Klux Klan. Its chairman is U.S. Rep. Edwin E. Willis (D-La.)

Criley said that should efforts to cancel the May 25 hearings here fail, "we will prepare a warm welcome for them." He said that he understands that students will picket any HUAC hearings held here.

Chicago Daily News
May 13, 1965

Exhibit 10

# House Unit Summons 11 Chicagoans

Eleven Chicagoans, including a research specialist with the Chicago Board of Health, have been subpenaed to appear before the House Un-American Activities Committee when it comes here May 25-27.

Public hearings will be held in the new Federal Building, 219 S. Dearborn.

Committee Chairman Edwin E. Willis (D-La.) has said the purpose of the hearings is to probe organization, tactics, strategy and objectives of the Communist Party in Illinois.

### Heart Expert

The Board of Health specialist is Dr. Jeremiah Stamler, 45, internationally know expert in the cardio - vascular field.

He heads a staff of about 40 persons doing research on cardio-vascular conditions, cancer and diabetes. His $21,000-a-year salary, however, comes from state and federal funds, not from the city.

Dr. Stamler is in Bethesda, Md., conferring on research pr9jects with other specialists at the National Institutes of Health.

Also subpenaed was on of his assistants at the Board of Health, Mrs. Yolanda Hall, 43.

Dr. Samuel L. Andelman, Chicago health commissioner, said of Dr. Stamler's subpena:

"Frankly, I don't know why he is being called before the committee.

"Some time back, over a year ago, the Federal Bureau of Investigation contacted me to find out exactly what Stamler did here and I told them of the heart program.

"They were to call me back if there was any sispicion of anything wrong or if he should not be kept on.

"The FBI did not call back except to ask that when he (Stamler) traveled abroad to let them know why and where.

"To the best of my knowledge, the FBI did not want us to take any action against him."

Mrs. Hall joined the board with Dr. Stamler in 1958. She has a master's degree in nutrition and is paid $775 monthly on a direct federal grant.

David Englestein, 61, of 737 W. Belden, told The Sun-Times he didn't know why he was subpenaed.

### Naturalized Citizen

An employe of the Avalon Truck and Auto Parts Co., 7370 South Chicago, he is an naturalized citizen who came to the United States from Montreal in 1930.

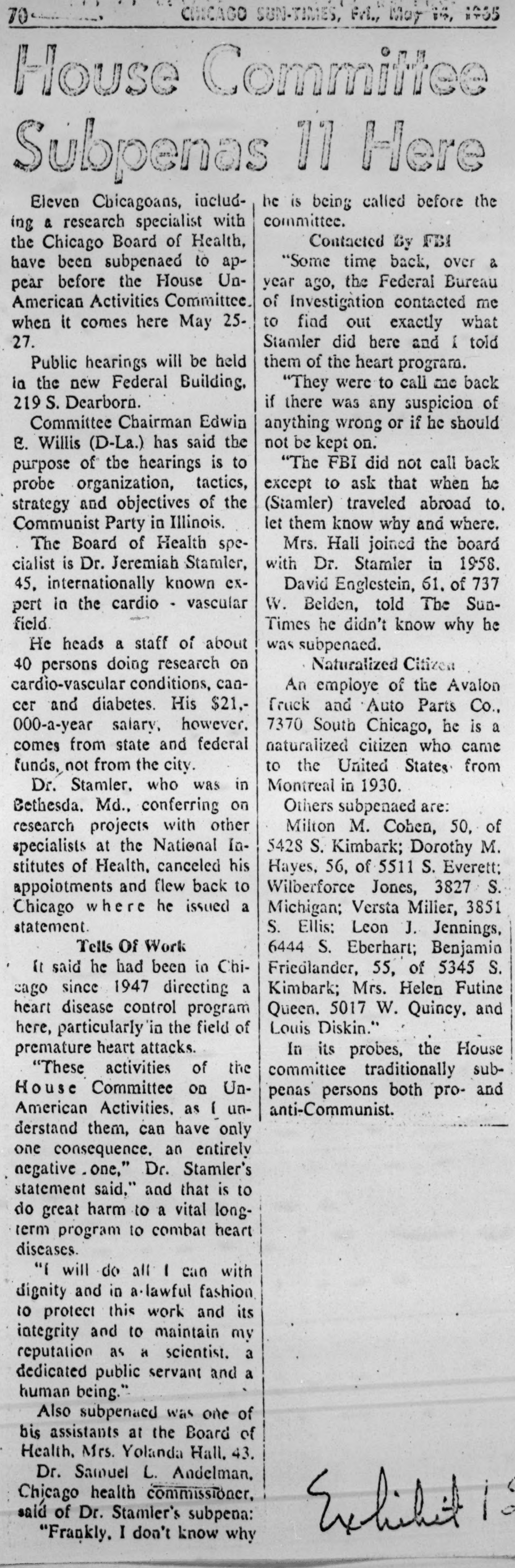
Others subpenaed are:

Milton M. Cohen, 50, of 5428 S. Kimbark; Dorothy M. Hayes, 56, of 4411 S. Everett; Wilberforce Jones, 3827 S. Michigan; Versta Miller, 3851 E. Ellis; Leon J. Jennings, 6444 S. Eberhart; benjamin Friedlander, 55, of 5345 S. Kimbark; Mrs. Helen Futine Queen, 5017 W. Quincy, and Louis Diskin.

In its probes, the House committee traditionally subpenas persons both pro- and anti-Communist.

Chicago Sun Times
May 14, 1965

Exhibit 11



# House Committee Subpenas 11 Here

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Dr. Stamler, who was in Bethesda, Md., conferring on research projects with other specialists at the National Institutes of Health, canceled his appointments and flew back to Chicago where he issued a statement.

### Tells Of Work

It said he had been in Chicago since 1947 directing a heart disease control program here, particularly in the field of premature heart attacks.

"These activities of the House Committee on Un-American Activities, as I understand them, can have only one consequence, an entirely negative one," Dr. Stamler's statement said," and that is to do great harm to a vital long-term program to combat heart diseases.

"I will do all I can with dignity and in a lawful fashion to protect this work and its integrity and to maintain my reputation as a scientist, a dedicated public servant and a human being."

Also subpenaed was one of his assistants at the Board of Health, Mrs. Yolanda Hall, 43.

Dr. Samuel L. Andelman, Chicago health commissioner, said of Dr. Stamler's subpena:

"Frankly, I don't know why he is being called before the committee.

### Contacted By FBI

"Some time back, over a year ago, the Federal Bureau of Investigation contacted me to find out exactly what Stamler did here and I told them of the heart program.

"They were to call me back if there was any suspicion of anything wrong or if he should not be kept on.

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Chicago Sun Times
May 14, 1965

Exhibit 12

# City Doctor Gets Red Quiz Subpena

A Chicago health department official, known for his research in heart ailments, is among 11 persons subpenaed to testify at hearings of the House un-American activities committee starting May 25, it was disclosed yesterday.

Dr. Samuel L. Andelman, health commissioner, said he first learned yesterday morning that Dr. Jeremiah Stamler, 45, director of the department's division of adult health and aging, was under subpena. He is paid $20,322 a year, and Andelman said about 40 employes work under him.

### Declines to Comment

Dr. Stamler, who was attending a meeting at the National Institutes of Health, in Bethesda, Md., declined comment pending his return to Chicago today.

Mayor Daley, meanwhile, said reports of communist infiltration in city departments was news to him.

He said he had ordered Thomas J. McInerney, city commissioner of investigation, to look into the reports.

When reporters left, Daley conferred behind closed doors for an hour with Andelman, McInerney, and Earl Bush, the mayor's public relations director. None would comment as they emerged.

The disclosure of the subpena came as the Albert and Mary Lasker Foundation announced that Dr. Stamler was a winner of one of the Foundation's medical journalism awards.

He and Alton Blakeslee, Associated Press science writer, received an award for their series, "Your Heart Has Nine Lives." Award winners received $2,500, a gold statuette, and a citation.

### Meeting Is Scheduled

Richard Crowley, secretary of the Chicago Committee to Defend the Bill of Rights, 431 S. Dearborn st., a branch of the national committee seeking to abolish the House un-Americans activities committee, said his committee was meeting last night in Chicago with those subpenaed.

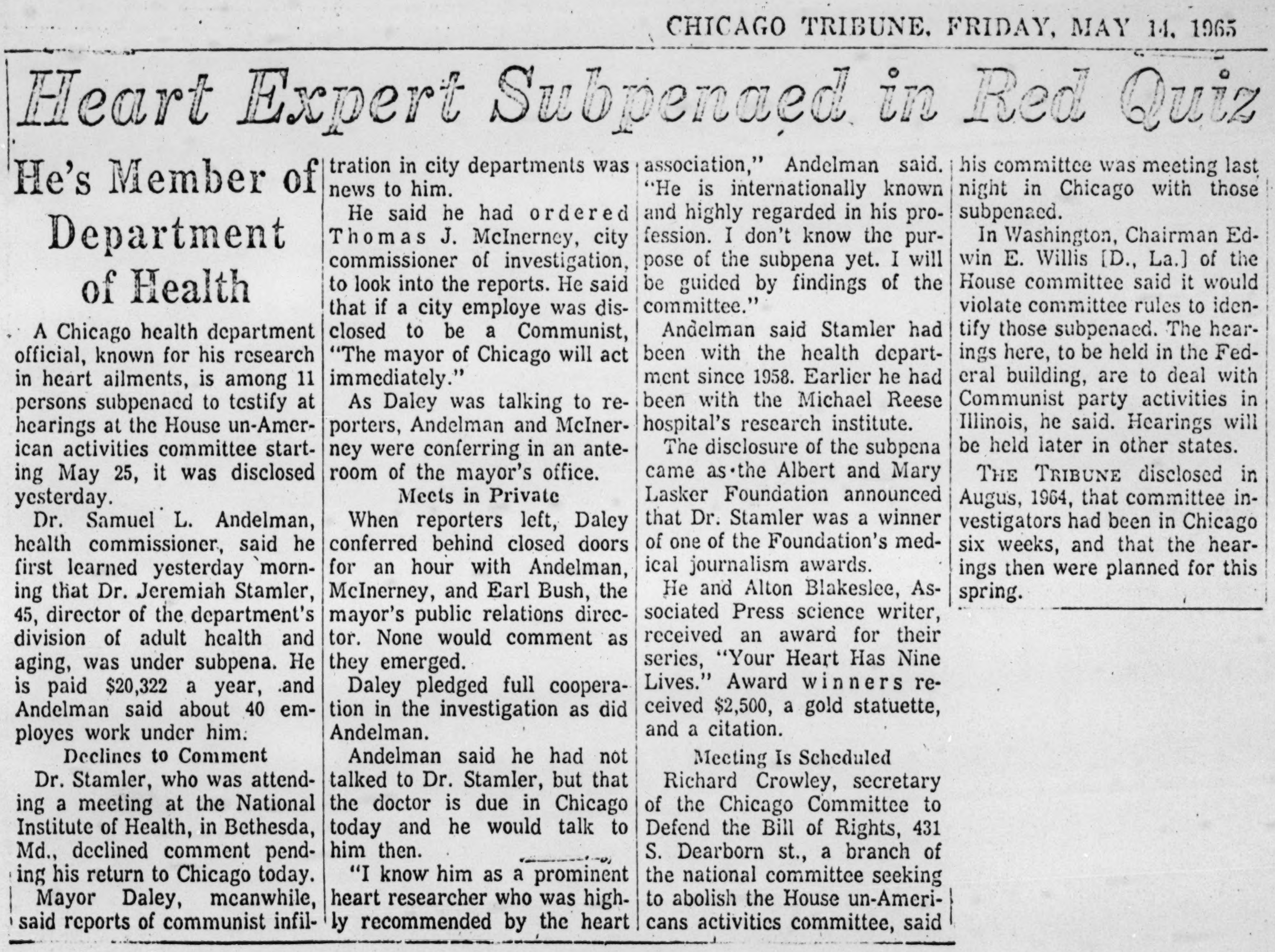
In Washington, Chairman Edwin E. Willis [D., La.] of the House committee said it would violate committee rules to identify those subpenaed. The hearings here, to be held in the Federal building, are to deal with Communist party activities in Illinois, he said. Hearings will be held later in other states.

THE TRIBUNE disclosed in August, 1964, that committee investigators had been in Chicago six weeks, and that the hearings then were planned for this spring.

5/14/65

Chicago Tribune
May 14, 1965

Exhibit 13



CHICAGO TRIBUNE, FRIDAY, MAY 14, 1965

# Heart Expert Subpenaed in Red Quiz

## He's Member of Department of Health

A Chicago health department official, known for his research in heart ailments, is among 11 persons subpenaed to testify at hearings at the House un-American activities committee starting May 25, it was disclosed yesterday.

Dr. Samuel L. Andelman, health commissioner, said he first learned yesterday morning that Dr. Jeremiah Stamler, 45, director of the department's division of adult health and aging, was under subpena. He is paid $20,322 a year, and Andelman said about 40 employes work under him.

### Declines to Comment

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Mayor Daley, meanwhile, said reports of communist infiltration in city departments was news to him.

He said he had ordered Thomas J. McInerney, city commissioner of investigation, to look into the reports. He said that if a city employe was disclosed to be a Communist, "The mayor of Chicago will act immediately."

As Daley was talking to reporters, Andelman and McInerney were conferring in an anteroom of the mayor's office.

### Meets in Private

When reporters left, Daley conferred behind closed doors for an hour with Andelman, McInerney, and Earl Bush, the mayor's public relations director. None would comment as they emerged.

Daley pledged full cooperation in the investigation as did Andelman.

Andelman said he had not talked to Dr. Stamler, but that the doctor is due in Chicago today and he would talk to him then.

"I know him as a prominent heart researcher who was highly recommended by the heart association," Andelman said. "He is internationally known and highly regarded in his profession. I don't know the purpose of the subpena yet. I will be guided by findings of the committee."

Andelman said Stamler had been with the health department since 1958. Earlier he had been with the Michael Reese hospital's research institute.

The disclosure of the subpena came as the Albert and Mary Lasker Foundation announced that Dr. Stamler was a winner of one of the Foundation's medical journalism awards.

He and Alton Blakeslee, Associated Press science writer, received an award for their series, "Your Heart Has Nine Lives." Award winners received $2,500, a gold statuette, and a citation.

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THE TRIBUNE disclosed in Augus, 1964, that committee investigators had been in Chicago six weeks, and that the hearings then were planned for this spring.

Chicago Tribune
May 14, 1965

Exhibit 14

# House Probe Foes Map Protests Here

**BY JAMES S. LEWIS**

Liberal and left-wing organizations have planned a mass rally, picketing and telephone calls to Chicago area congressmen to protest House Un-American Activities Committee hearings here later this month.

Nine of 11 Chicagoans known to have been subpenaed were among more than 75 persons crammed into a small room Thursday night at a meeting to plan the series of protests.

The meeting was called by the Chicago Committee to Defend the Bill of Rights. It was held in the office of the American Friends Service Committee, 431 S. Dearborn.

The HUAC hearings are scheduled for May 25-27 in the U.S. Courthouse, 219 S. Dearborn.

**THE ANTI-HUAC** forces are starting their campaign Friday with a series of telephone calls to eight of the Chicago area's 13 congressmen urging them to pressure the committee into canceling the hearings.

The other five congressmen, they felt, would not be co-operative.

Other plans, all based on an assumed failure to get the hearings canceled, include a mass meeting Sunday, May 23, picketing of the U.S. Courthouse all three days of the hearings, and free legal aid for those under subpena.

The rally was planned for the First Congregational Church of Chicago, 1613 W. Washington. It seats 1,000 persons.

**THE BEST-KNOWN** of the 11 receiving subpenas, Dr. Jeremiah Stamler, heart specialist for the Chicago Board of Health, was receiving a medical journalism award from Vice President Hubert H. Humphrey at the time of Thursday's meeting.

Also absent was Mrs. Yolanda Hall, 43, an assistant researcher for the Board of Health.

They are the only two city employes subpenaed.

Those subpenaed who attended the meeting were:

- Milton M. Cohen, 50, of 5428 S. Kimbark, a former teacher of Marxist fundamentals in the Abraham Lincoln School, an institution run by the Communist Party.
- Louis Diskin, manager of the left-wing Modern Book Store, 56 E. Chicago Av., which carries Communist literature and was bombed last year.
- Wilberforce Jones, 3827 S. Michigan, member and former steward of the United Auto Workers, AFL-CIO.
- Mrs. Leon Joy Jennings 6444 S. Eberhart, also active in the UAW.
- Versta Miller, 3851 S. Ellis.
- Mrs. Helen Fotine Queen, 5017 W. Quincy. "We're surprised they subpenaed her and not her husband," was a comment made when she was introduced. Her husband, Daniel Queen, an engineer, was ordered in 1963 to register as a Communist.
- Benjamin Friedlander, 55, of 5345 S. Kimbark, a chemist.
- David Englestein, 61, of 737 W. Belden, a naturalized citizen who came here from Montreal in 1930.
- Mrs. Dorothy Hayes, 56, worker.

**RELEASE OF** the names of those subpenaed in advance of a hearing is a violation of HUAC's own rules, said Richard Criley, secretary of the Chicago Committee to Defend the Bill of Rights.

"HUAC at one time subpenaed 125 California school teachers, then called off the hearing," Criley said. "And many of them lost their jobs.

"In addition, many who are subpenaed for a hearing that does come off are never called to testify."

Criley told the group that the leak came through members of the Chicago Police Department "Red squad," which served the subpenas

The Rev. William T. Baird, a white minister wearing a button signifying his membership in The Woodlawn Organization, was chairman of the meeting as executive director of the Chicago committee.

Most of the group were representatives of organizations, including church groups, ranging from liberal to leftist. There were about a dozen students, but only eight members of the Chicago committee, which was formed five years ago, chiefly to fight the House committee.

**DR. STAMLER** issued a statement, stating in part:

"I was displeased to learn of the stories about the House Un-American Activities Committee. I have not yet had an opportunity to discuss these matters with my superiors and colleagues, and I anticipate doing so Friday.

"Pending this, I have this initial reaction: These activities of the House Committee on Un-American Activities, as I understand them, can have only one consequence, an entirely negative one—if this is allowed—and that is to do gr[illegible] harm to a vital long-term program to combat heart diseases."

Dr. Stamler was hired in April, 1958, by the Board of Health, and earns about $21,000 a year, according to his superior, Dr. Samuel L. Andelman, Chicago health commissioner.

Chicago Daily News
May 14, 1965

Exhibit 15

# Stamler Signs Affidavit Of Loyalty

Dr. Jeremiah Stamler, Chicago Board of Health research specialist, signed an affidavit Friday swearing his allegiance to the United States.

Stamler, an internationally known expert in cardiovascular ailments, is one of 11 persons subpenaed to appear before the House Un-American Activities Committee when it comes here May 25-27.

The affidavit, a copy of which was turned over to Mayor Daley, said in part:

"I swear allegiance to the American flag and the Constitution of the United States. At no time during my association with the Chicago Board of Health have I engaged in subversive activities of any kind, nor have I actively consorted with groups or individuals with such objectives.

"I am a loyal American citizen and I neither recognize nor intend any obligation in the future to any nation other than my own."

Stamler signed the affidavit after meeting with Health Comr. Dr. Samuel L. Andelman, and Dr. Eric Oldberg, president of the board.

Stamler, 45, is director of the health department's Adult Health and Aging Division.

Chicago Sun Times
May 15, 1965

Exhibit 16

CHICAGO SUN-TIMES, Sat., May 15, 1965

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Stamler, 45, is director of the health department's Adult Health and Aging Division.

Chicago Sun Times
May 15, 1965

Exhibit 17

# DOCTOR SIGNS LOYALTY OATH IN RED PROBE

## Good American, Says Health Official

Dr. Jeremiah Stamler, a Chicago health department official who is one of 11 persons subpenaed by the House un-American activities committee to testify at its upcoming investigation into Communist party activities in Illinois, signed a statement here yesterday saying that "I swear allegiance to the American flag and to the Constitution of the United States."

The statement was distributed to newsmen by Dr. Eric Oldberg, president of the board of health, who said Dr. Stamler agreed to draft the statement and sign it after a conference with Dr. Oldberg and Dr. Samuel Andelman, health commissioner.

### "A Loyal American"

"At no time during my association with the Chicago board of health have I engaged in subversive activities of any kind," Dr. Stamler's statement continued, "nor have I actively consorted with groups or individuals with such objectives.

"I am a loyal American citizen, and I neither recognize, nor intend any obligation in the future, to any nation other than my own."

Dr. Oldberg said Dr. Stamler has not been suspended and will remain on the department's payroll. "There's nothing to do but let the hearings come up," Dr. Oldberg continued. The hearings open here May 25.

Dr. Stamler, 45, director of the department's division of adult health and aging, is a recognized expert on research into heart attacks and strokes.

Dr. Stamler told a reporter he was "surprised" by the subpena, but declined to discuss the matter further than passing out a prepared statement. In the statement he said he was "displeased" to see newspaper stories identifying him as one of those under subpena.

### Sees Negative Effect

"The activities of the House un-American activities committee as I understand them and relate to them can have only one consequence, an entirely negative one, and that is to do great harm to a vital long-term program to combat heart diseases."

Meanwhile, THE TRIBUNE learned that Dr. Stamler, who is paid $20,322 a year and is in charge of about 40 employes, told Dr. Andelman that he does not know why he was subpenaed.

Thomas J. McInerny, Mayor Daley's commissioner of investigations, said that he is continuing to look into reports charging communist infiltration of a city department. He said he expects to have a report ready for the mayor by the middle of next week.

Chicago Tribune
May 15, 1965

Exhibit 18

Amer 5/15

# Dr. Stamler Swears: Not a Subversive

Dr. Eric Oldberg, president of the Chicago board of health, has released the text of a loyalty oath signed yesterday by Dr. Jeremiah Stamler, one of 11 persons subpenaed to appear before the House un-American activities committee which opens 3 days of hearings here May 25.

Dr. Stamler, a heart researcher and director of the health department's division of adult health and aging, signed the oath after conferring with Dr. Oldberg and Dr. Samuel L. Andelman, city health commissioner. The text follows:

"This will certify that I swear allegiance to the American flag and the Constitution of the United States. At no time during my association with the Chicago board of health have I engaged in subversive activities of any kind, nor have I actively consorted with groups or individuals with such objectives.

"I am a loyal American citizen and I neither recognize nor intend any obligation in the future to any nation other than my own."

Chicago American
May 15, 1965

Exhibit 19

# Probers' Letter Called 'An Invitation to Panic'

BY JAMES S. LEWIS

A letter sent to perhaps as many as 100 Chicagoans by the House Un-American Activities Committee has been called "an invitation to panic" by anti-HUAC people here.

The letter, sent last week under the signature of HUAC Chairman Rep. Edwin E. Willis (D-La.), told recipients they had been named as having been a member of the Communist Party.

The letter was identified as "not a subpena" but invited those named to appear before a closed session of the committee and also invited them to request the committee "to subpena additional witnesses."

**THE NUMBER** of these form letters sent to Chicago area people is known only to HUAC, but the Chicago Committee to Defend the Bill of Rights reported receiving calls from at least 30 local persons.

Eleven Chicagoans were known to have been served subpenas directly from the House committee. These persons also received the letters, according to Richard Criley, secretary of the Chicago committee.

Criley said he had checked with Frank Wilkinson, chairman of the National Committee to Abolish HUAC, and said that the volume of such letters sent out was higher than for any previous HUAC hearing.

"Most people who get such letters don't talk to anybody about them," Criley said. "But with at least 30 people calling us, the number sent out is conservatively 100.

"They (congressmen on the HUAC committee) have no legislative purpose here at all," Criley said.

**FIVE MEMBERS** of the nine-man House committee are scheduled to open a three-day hearing here next Tuesday in the U.S. Courthouse "to investigate the strategy and tactics of the Communist Party in the Chicago area."

"It's the most stinking example of McCarthyism I can remember," Criley said. "It's a classic case of exposure for the sake of exposure. Some of these frantic people (who received the letter) might throw in another hundred names.

"In effect, HUAC is telling these people that if they don't appear in a closed session on its terms, they will be named by somebody else in an open hearing."

**THE LETTER** in full reads:

"Pursuant to House Rule XI, 26-M, the Committee on Un-American Activities has received certain evidence and testimony in executive (closed) session, in the course of which a person by the name of (name of addressee), a resident of Chicago, Ill., was identified as having been a member of the Communist Party.

"If you so desire, you will be afforded an opportunity voluntarily to appear as a witness before a subcommittee of the Committee on Un-American Activities at a time and place to be designated.

"According to the general practice of the committee, this hearing shall be conducted in executive session.

"You may also request the committee to subpena additional witnesses.

"If you desire to avail yourself of the opportunities thus afforded you, you should so advise the Director of the Committee no later than Tuesday, May 18, 1965. He may be reached at Room 226, Cannon House Office Building, Washington, 25, D.C.; Tel. Capitol 4-3121, Extension 3051.

"This is not a subpena or a summons requiring you to appear.

"Very truly yours, E. E. Willis, Chairman."

Chicago Daily News
May 18, 1965

Exhibit 20

CHICAGO SUN-TIMES, Wed., May 19, 1965 9

# 30 Chicagoans Invited Before Red Probe Here

At least 30 Chicagoans reportedly have received letters from the House Un-American Activities Committee informing them that they were named as having been members of the Communist Party.

The letters invite recipients to appear before the subcommittee "at a time and place to be designated." They do not carry the power of subpena.

A Chicago Theological Seminary professor immediately assailed the letters as a "veiled threat that the recipients will be named in the Chicago hearings."

### Called Diabolic

Dr. Victor Obenhaus, professor of Christian ethics and vice chairman of the Chicago Committee to Defend the Bill of Rights, who did not receive a letter from the committee, declared:

"The whole thing is preposterous. What right do they (the committee) have to ask you to clear yourself if there are no charges? The veiled threat this contains is simply diabolic."

The 30 or more committee letters were reported by the recipients to Richard Criley, secretary of the Bill of Rights Committee, 431 S. Dearborn.

Criley estimated that 100 or or more Chicagoans have received letters, explaining that "most people wouldn't tell anybody if they got a letter of this type."

### 'Ordinary People'

Criley said the 30 persons who telephoned his committee were "ordinary people who have been involved in some sort of social concern."

He termed the invitation to meet with the committee an effort to force a recipient to inform on other persons to "save your own skin."

Subpenas already have been issued to 11 persons in the Chicago area, including Dr. Jeremiah Stamler, heart specialist for the Chicago Board of Health, to appear at committee hearings in Chicago beginning next Tuesday.

The letters, Criley said, read in part:

"If you so desire, you will afforded an opportunity voluntarily to appear as a witness before a subcommittee.

### Closed Session

"According to the gneral practice of this committee, the hearings shall be conducted in executive (closed) session.

"You may also request the committee to subpena additional witnesses."

Criley said the letters carry the signature of Rep. Edwin E. Willis (D-La.), committee chairman.

Also Tuesday, the Illinois division of the American Civil Liberties Union expressed "great dismay that officials of the Chicago Board of Health felt it necessary" for Dr. Stamler to sign a loyalty oath.

Stamler signed the oath last week after he received the subpena.

Franklyn S. Haiman, Illinois ACLU chairman, said a subpena from the committee should not be considered important enough to provoke loyalty oaths or investigations in city departments.

He said the committee "persists in conduct widely discredited and condemned."

The president of the Board of Health, Dr. Eric Oldberg, termed the ACLU stand "utterly ridiculous."

### Oldberg's Stand

Oldberg said he had asked Dr. Stamler "if he would sign this thing to take him off the griddle. I didn't demand it; I merely asked him and he agreed immediately. They were building fires under him and rumors were starting."

Oldberg said he had advised against a suggestion "from someone that he take a leave of absence until the hearings were over." Oldberg said such a leave would be "an admission of some sort of wrongdoing."

He said Dr. Stamler's work has been "outstanding," and added he would be willing to appear as a witness for Dr. Stamler.

Dr. Stamler declined to comment on the ACLU criticism.

Chicago Sun Times
May 19, 1965

Exhibit 21

Exhibit 22

# Loyalty Statement Won't Free Dr. Stamler from Anti-Red Quiz

BY JAMES S. LEWIS

Although Dr. Jeremiah Stamler of the Chicago Board of Health announced he has signed a loyalty oath, he cannot be separated from those subpenaed to appear before the House Un-American Activities Committee here next week.

This is the ruling of U.S. Rep. Edwin E. Willis (D-La.), Un-American Activities Committee chairman, when advised by telephone that Dr. Stamler had issued a statement of loyalty to the U.S. flag and Constitution.

"That's what you say he said," Rep. Willis replied.

Dr. Stamler, 45, is a nationally known heart disease specialist and is director of the health department's adult health and aging department.

**DR. STAMLER'S** statement, issued last week at the suggestion of Dr. Eric Oldberg, president of the health board, was apparently not considered a loyalty oath by either side in the upcoming hearings.

"It was an oath of affirmation, like any of us give when we pledge allegiance to the flag," said Chicago's chief Un-American Activities Committee for Richard Criley, secretary of the Chicago Committee to Defend the Bill of Rights.

"It's certainly not a loyalty oath by HUAC standards," Rep. Willis said. He had no further comment on Stamler nor about the number of letters sent to Chicagoans inviting them to testify in closed session. The hearings open next Tuesday.

The letters told Chicagoans they had been identified as having been Communists and invited them to testify and, if they wished, to name others, to help clear their names.

Criley estimates the number of letters at 100, based on 30 calls his office received from recipients. "Most people who get such letters don't talk to anybody," Criley explained.

**REP. WILLIS** said the letters were standard procedure and were sent "to individuals likely to be named in a public hearing" in the atmosphere "of decency and fair play."

Willis also denied responsibility for leaking the names of at least 11 persons subpenaed to testify before the three-day hearings set to begin Tuesday in the U.S. Courthouse here.

"I don't know why Crider leaked the names," he said. "Crider has four times been named a member of the Communist Party, and he has never denied the charge."

Asked if he meant Criley instead of Crider, Rep. Willis said "Yes, I do. Criley."

The names of those known to be subpenaed were made public, against the House Committee's Rule 26, by another newspaper in Chicago, which, according to Criley, misquoted him as a pretext for running the names.

The names came from the Chicago Police "Red Squad," and not from him, Criley asserted, adding that the newspaper had the names long before he did.

**THE AMERICAN** Civil Liberties Union, meanwhile, attacked the subpena of Dr. Stamler "from a Congressional committee which persists in conducting hearings widely discredited and condemned even by American President."

Franklyn S. Haiman, ACLU chairman in Illinois, wrote Dr. Oldberg that the ACLU "has noted with dismay the fact that officials of the Chicago Board of Health felt it necessary for Dr. Jeremiah Stamler to sign a statement declaring his loyalty and non-participation in 'subversive' activities, whatever those may be."

**IN SPRINGFIELD,** the Rev. C. T. Vivian, one of the Rev. Martin Luther King's lieutenants, attacked the House Committee hearings in a civil rights speech on the steps of the Illinois Capitol.

**"The real desire of the committee is to assassinate the civil rights movement with smear tactics, and to go after SNCC and CORE." (Student Non-Violent Coordinating Committee and Congress of Racial Equality, two active civil rights groups.)**

The chairman of the Chicago Committee to Defend the Bill of Rights, University of Chicago Prof. Robert J. Havighurst, has been out of town since the hearings were announced a week ago.

The committee, however, in his absence, has planned a rally to protest the hearings at 7 p.m. Sunday in the First Congregational Church of Chicago, 1613 W. Washington.

Chicago Daily News
May 19, 1965

Austin News 5/19/65

**3 from Austin [illegible]bpenaed**

# Claims UPG Leader May Testify at House Hearings

A spokesman for the committee defending three Austin residents and eight others subpenaed to appear before the House Un-American Activities committee at its May 25-27 hearings indicated that a United Property Group spokesman may also testify.

**"But there's this difference," said Richard Criley, secretary to the Chicago committee to Defend the Bill of Rights, "this UPG spokesman, who has a funny sounding Italian name, would have volunteered his testimony and would thus be what is called a friendly witness. The persons who are subpenaed are considered by the public to be unwilling to appear."**

Robert Bacigalupo, UPG president, said he had not been asked to appear at the hearings, adding however, that he believed UPG efforts had been instrumental in bringing the activities of some Austin residents to the attention of the proper authorities.

* * *

Reported to have been subpenaed for the congressional committee hearings were Mrs. Yolanda Hall, 5515 Race; Louis Deskin, whose last known address was 4639 Jackson and Mrs. Helen Fotine Queen, 5017 Quincy.

Deskin, contacted at the Modern Book Store, 56 E. Chicago, which he manages, said he had been advised not to answer any questions, referring callers to the Defend the Bill of Rights committee.

**"All of the subpenaed people met last night," he said Friday, "and were advised to refer everyone to the committee. There's a legal question involved."**

Criley said attorneys for his committee hoped to obtain a federal injunction against the May 25-27 hearings based on a violation of the Un-American Activities committee rules prohibiting release of the names of those subpenaed prior to the hearings.

He claims someone associated with that committee purposely "leaked" the names to a reporter on a daily newspaper. Another source, however, claims the information came from the policemen who served the subpenas.

* * *

Deskin, who reportedly carries leftist literature in his book store, is listed as once serving as the New York chairman of the Labor Youth league, earlier known as the Young Communist league.

**Mrs. Queen is the wife of Daniel Queen, charged with heading the Illinois youth section of the Communist party by the subversive activity control board. He was ordered in 1963 to register as a member of the Communist party under the McCarron act but refused to do so.**

Mrs. Hall, wife of Charles Hall, who reportedly was removed from his post as a volunteer leader with the Cub Scouts, is employed as an assistant to Dr. Jeremiah Stamler, board of health heart specialist, also subpenaed.

Dr. Stamler has since signed a loyalty oath.

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## *Heard And Seen*

BY MARY STUART

**POLITICAL PHILOSOPHY**—"I am not afraid of catastrophe in the war. I am, however, afraid, and deeply afraid, of the destruction of our republican form of government under excuse of war."—Col. ROBERT R. McCORMICK (1943).

* * *

**THE UN-AMERICAN** congressional committee may find a fertile field here. Both pro and anti-communists will be called to obtain information. A woman in 1949 was "refused a teaching position in the Chicago schools on grounds of Communist connections." One wonders why she is now in the Chicago Health dept. — acting as an aide to a prominent physician? She is on the federal payroll at $775 per month.

* * *

Austin News
May 19, 1965

Exhibit 23

[enclosed, Jenner to Rachlin, 1965, July 3]

May 27, 1965

## STATEMENT OF ALBERT E. JENNER, JR. TO HOUSE UN-AMERICAN ACTIVITIES COMMITTEE

I am counsel for Doctor Jeremiah Stamler and Mrs. Yolanda F. Hall, each of whom has been subpoenaed to testify before this Honorable Committee. My clients have been present in the Committee's hearing room throughout the proceedings which have been conducted by the Committee. I appreciate the courtesy and indulgence the Committee has extended to me in view of the professional engagement which required my presence in New York City the past two days.

### Executive Session

On May 25, 1965, my partner, Thomas P. Sullivan, delivered to the Committee a letter in which I made several requests upon behalf of Dr. Stamler and Mrs. Hall. The first of these requests was, pursuant to Rule 26(m) of the rules adopted for this Committee by the House of Representatives, that the testimony of Dr. Stamler and Mrs. Hall be taken in executive session. The request encompassed not only their testimony, but also any testimony concerning them by any other witness. I renew that request.

In light of what has occurred before this Honorable Sub-committee when prior subpoenaed witnesses took the stand, I anticipate that the interrogation of my clients will consist of assertions, conclusions and innuendoes contained in questions put by the Committee's distinguished counsel, based on hearsay or speculation, which will tend to defame, degrade or incriminate. It makes no difference that these assertions are untrue or unsupported. A large segment of the public will assume the truth of whatever statements are made by Committee counsel. We all know that counsel are not subject to cross-examination and in any event counsel for the Committee neither has nor purports to have personal knowledge of the matters he asserts.

In this posture, and in this hostile setting, we have no way of defending our clients from the defamatory and prejudicial implications contained in the questions. They should not be forced to undergo this type of questioning in public or otherwise.

We respectfully submit that to refuse to grant this motion for executive sessions will constitute an abuse of discretion and a violation of Rule 26(m) of the Rules of the House of Representatives adopted for this Committee, and result in unwarranted serious damage to the reputations of these people, each of whom is a loyal United States citizen.

## Executive Session

## Examination of Evidence Against Clients

In my letter of May 25, 1965, I requested (and Mr. Sullivan has from time to time on appropriate occasions respectfully repeated) an opportunity to examine, in executive session, any and all persons who have given or might give any testimony before this Honorable Committee, whether in public or executive session, concerning Dr. Stamler or Mrs. Hall, and as well, so to examine any and all other evidence, documentary or otherwise, concerning them. This Honorable Committee has seen fit in its wisdom to deny these requests. No testimony has been given in these public hearings relating to my clients. I am, of course, unadvised as to the Committee's executive sessions. I do not intend to submit them to a series of leading, suggestive, prejudicial and defamatory questions put by counsel for this distinguished committee. No rule of this Committee or law requires a citizen to be subjected to such questions. Fortunately, the Constitution of the United States protects all witnesses, whether before courts, legislative committees or administrative bodies against unfair questioning.

I request, therefore, that before my clients are interrogated, that I be afforded full opportunity to examine in executive session all witnesses and evidence, if any, which this Committee has heard concerning my clients. If this request is denied, these subpoenaes should be quashed and I so request.

## Hearings Relating to Release of Witnesses' Names in violation of Rule 16.

Rule 16 of the Rules of this Committee provide;

> "No Member of the Committee or staff shall make public the name of any witness subpoenaed before the Committee or Subcommittee prior to the date of his appearance."

On May 13, 1965, 12 days before the hearings were to commence, the names of the 11 persons subpoenaed to testify here were published in the public press. Copies of many of those newspapers stories are attached to the complaint in the cause in the United States District Court entitled and numbered Stamler v. Willis, 65 C 800, which we intend to place in evidence before this Committee. Those articles included pictures of Dr. Stamler, and among other things references to these hearings as a "Red Probe."

Understandably, I have no personal knowledge in the premises but on the record it is reasonably to be deduced that the names of these persons were procured from this Committee or some agent of the Committee.

The distinguished Chairman has stated that to the best of his knowledge no one connected with the Committee released the names to the press. In the interest of clarifying this issue, we ask that hearings be held immediately to determine the true facts. We request, pursuant to Rule 26(m)(3) that subpoenaes issue forthwith to all persons who served these subpoenaes, or delivered them for service, including Neil E. Wetterman, and Donald I. Sweaney, Jr., as agents of the Committee, to come before it at once and testify as to which agent or employee of the Committee released the names of subpoenaed witnesses 12 days before the hearings began, in violation of Rule 16, which resulted in grave damage to the reputations of my clients, as to whom not one word of testimony has yet been uttered before the Committee in these public proceedings.

Pending this investigation, I request that the Committee postpone any further proceedings until the persons responsible for this violation of Rule 16 have been identified.

## Copy of Transcripts

I request further that I be provided with a copy of the transcript of the entire session of the public hearings of the Committee held in Chicago on May 25, 26 and 27, 1965, and all testimony and documentary evidence of or concerning Dr. Stamler and Mrs. Hall, whether in public or executive session, and whether at this series of sessions or a prior session or sessions of the Committee or a subcommittee thereof.

## Objections to Entire Proceedings

Before the Committee interrogates Dr. Stamler and Mrs. Hall, I would like respectfully to state for the record certain objections on behalf of my client to the proceedings which have been and are being undertaken by this Honorable

Committee. Most of those objections are set forth in written form in their complaint in the United States District Court for the Northern District of Illinois, Eastern Division, Docket No. 65 C 800 which I have heretofore mentioned.

I tender a copy of that complaint into the record of this Committee, and adopt by this reference all of the allegations and objections therein contained. I have marked it as Stamler-Hall Exhibit 1 as of today. I offer it into evidence. I ask that it be included in the record of these proceedings.

[IF DENIED, READ COMPLAINT, pars. 1 to 16.]

We further object to the proceedings because these hearings are not being held in executive session. It is clear from what has occurred in these hearings on May 25 and 26, 1965, (1) that public hearings are not needed, because you have already heard Lolabelle Holmes and Lucius Armstrong in executive session, and the repetition in these public hearings has served, as it could only serve, to injure persons whom they charged to be or to have been members of the Communist Party, and (ii) the questioning of my clients will be of a defamatory and prejudicial nature, and irreparably harmful to their good reputations which they cherish.

We have been supplied with copies of the resolution authorizing the holding of the hearings in Chicago at this time, and with a copy of the statement which you, Mr. Chairman, made at the time the hearings were convened on May 25, 1965. However, it is my opinion and I respectfully state that these additional specifications do not cure the defects referred to in the complaint in Stamler v. Willis or render the enabling Act establishing this Committee constitutionally definite as to the purpose for which this Committee is and has been holding these hearings. In any event neither those statements nor the resolution cast light upon either the need or the right of this Honorable Committee to interrogate Dr. Stamler and Mrs. Hall on any subject whatsoever.

## Confrontation and Due Process

I respectfully submit that we have been denied the right to confront and examine the witnesses, if there are any, who have testified concerning my clients before this Committee. None has appeared during these public hearings. This is a direct and insidious violation of the Sixth Amendment to the federal Constitution. Despite careful consideration of the record I have no idea why my clients are summoned here, what charge they are called upon to meet, or the legislative purpose or relevancy of their testimony. This is a clear violation of the Due Process Clause of the Bill of Rights.

Moreover, because of the severe limitations placed on counsel for witnesses by this Honorable Committee, and in light of the physical mistreatment and attempted intimidation of my partner Mr. Sullivan yesterday, all at the direction of the Chairman, pro tem, our clients have been deprived of the effective right to counsel and of due process, each of which is guaranteed them by the Bill of Rights.

Yesterday I filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit from the judgment entered by the Hon. Julius J. Hoffman dismissing the complaint in Stamler et al. v. Willis, et al., 65 C 800. The case is now pending before the Court of Appeals and will proceed in due course. Accordingly, it is inappropriate for my clients at this time to give any testimony to this Committee, and indeed if they did so it would render moot the very litigation in which they seek a determination of various grave questions of constitutional privileges and immunities raised in the complaint as to the legal basis for this Distinguished Committee, the constitutional propriety of these hearings, and of the subpoenaes served upon my clients. My clients have the right under our Constitution to have their legal position determined in court before giving their testimony to this Committee.

For all of the foregoing reasons, including all of those specified in the complaint marked Stamler-Hall Exhibit 1, and all motions made during these proceedings by Mr. Sullivan and myself, I move that this Honorable Committee quash the subpoenaes served on Dr. Stamler and Mrs. Hall.

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In light of your ruling, and for all reasons previously stated, I have advised my clients to give no testimony to or further to cooperate with this Honorable Committee until the outcome of the pending litigation. I have given them this advice in my professional capacity as their personal counsel, after careful consideration and extended consultation with them, and my co-counsel, Mr. Arthur Kinoy of New York, and my partner, Mr. Sullivan. We take this position without intending to reflect upon this Distinguished Committee or any of its distinguished members or counsel, and without any contempt for or lack of respect for this Committee, and of its members or its counsel. If and when that case is finally determined, and if that determination is adverse to my clients, they will return and proceed before this Committee. However, until that time, I have advised my clients to give no testimony or information to or further to coöperate with this Honorable Committee.

3 Negro sailors (including brother),
arrested for allegedly assaulting 3 officers
convicted

1) Were arrested w/o being told why; did not discover why until brought before "his accusers" (the 3 officers?)

2) Only description for initial arrest was "3 Negro men". The assaulted officer wrote down his description while he stood before them.

a) One of the officers said he was not an assailant; another said he was not sure but changed his mind at the coaxing of the police

3) At the court-martial only the defendants and their witnesses were present. Plaintiffs & their witnesses did not appear.

4) 4 mos. imprisonment; $200 fine; (dis-honorable discharge?)

§§6216 - 6232 Repealed
6239, 6665, -6672, & 6678

Ⓘ Title 24 Education

Chapter 5 Article 1

§6216-01 - There shall be maintained a uniform system of free public schools ... ( grades 1-12 may be divided as local bd. finds practical).

* -02 - Curriculum shall consist ... and such other subjects as may be added by the State Bd. of Ed.

Curriculum

-03 The state bd of ed. is hereby authorized to appoint a curriculum committee .. to make a continuous study of the curriculum of the public schools and to make recommendations to the state bd. of ed. ... as to changes which should be made in the curriculum...

[-13 Laws repealed]

§6229-01 The dept. of audit of the office of the state auditor of public accounts ... is hereby authorized and directed to prescribe and formulate for use by all school districts ... adequate accounting systems and other essential financial records which shall be uniform for all of the school districts of this state...

uniform accounting system

-02 State Auditor may appoint 10 additional examiners to check reports

-03 powers of investigation

(II) §6232-21 . . . The Governor . . . is hereby vested with the ~~power~~ authority to close any one or more or all schools in any school . . district . . . when in his discretion, he determines such closure to be in the best interest . . . . May also close schools to preserve the public peace.

-22 may reopen

-24. The provisions of this Act shall not operate to prevent 4 months of full public school, but the bd of trustees [local? yes] shall determine when such 4 months . . . shall be had

-25 salaries of supers, teachers, & other employees may be paid while schools are closed in the discretion of the bd of trustees [is local]

-26 children may be transferred to another school or district

-41 - Bd. of Trustees may also close school

-43 - petition to reopen when closed by bd trustees

-46 - appeal to chancery court

Article 2 State bd of Ed.
[see 3]

③

Article 2 - State Board of Ed.

(~~appointed~~ elected?) §6233 State bd. of ed. to consist of state superintendent of ed., atty gen., & sec of state. Super presides

6234 - decides appeals from decisions of cty. supers.

6235 - may remove cty supts in certain cases. (see (c) below)

Repealed ~~6236 - In addition to the regular per capita appropriation for common schools the leg. shall provide an equalizing fund, which shall be ~~dist~~ disbursed by the state bd. of ed. as may be provided by the leg.~~

6237 - shall audit claims against the common school fund

☆ (Administration) 6238 The Bd. of Ed. shall adopt a course of study to be used in the public schools of the state and shall regulate all matters arising in the practical administration of the school system not otherwise provided for.

Repealed ~~6239. The bd. of ed. shall require the principal of every public school to give such appropriate exercises as will create a better understanding of nature ~~[illegible]~~ ... Program prepared by state supt~~ ...

6240 - rules & regs for adult ed. to be prescribed by State bd. of ed

6241 - est. & conduct trade schools

(9) Art. 3 [New] State Dept of Ed.

6245.01 – consists of state super; ass't s.s., dir. of fin. & adm; dir. of the div. of instruct.

-02- charged with the execution of all laws relating to the administrative, supervisory and consultative services to the public schools, agric. H.S's and jr. colleges. . . . Subject to the direction of the state bd. of ed. as provided for by law, the administration, management & control of the dept is vested in the super. of public ed., who shall be directly responsible for the rightful functioning thereof.

-03- The state super of public ed. shall be elected for a term of 4 yrs. . . . shall remain in office until his successor is elected & qualified, and [shall be resp. for the general supervision of the common schools and educational interests of the state, and he shall perform such other duties as prescribed by law.]

-04- Ass't S.S. et. al. shall be selected by and hold office subject to the S.S. except as provided in -06.

-05. S.S. $ salary fixed by leg.; SS fixes others.

-06- voc. ed

⑤ 6245-07 - The super. of public ed. shall have the power and it shall be his duty:

1) to supervise in the manner herein provided the public free schools. . and to prescribe such rules and regs. for the efficient organization and conduct of the same as he shall deem necessary;

see 3674 § 12 2) preside over meetings of state bd. of ed.

+ 3) collect data for determining the proper distribution of the state common school funds.

+ 6) to prepare, have printed, and furnish all officers charged with the administration of the laws pertaining to public schools ~~[illegible]~~ such blank forms & books as may be necessary to the proper discharge of their duties, and all of this printing shall be paid for out of funds provided by the leg.

7) to have printed the laws pertaining to the public schools and publish therein forms for conducting school business, the rules and regs. for the gov't of schools, that he , or the bd of ed. may recommend. . . . funds provided by leg.

8) to meet the cty. supers. annually . . to accumulate facts relative to schools, to review educ. progress, compare views discuss problems etc. and other matters pertaining to the public [illegible]

9) To advise cty. supers. upon all matters involving welfare of the schools; at request of cty super, to give his opinion on a written statement of facts on all q's + controversies arising out of the interp. & construction of the school laws in regard to rights, powers, and duties of school officers . . . .

A 10) to require annually, and as often as he may deem proper, of cty. supers, detailed reports on the educational business of various counties.

12) biennial report to leg: on:
   a) receipt & disbursement of school fund
   b) number of dists, teachers, pupils.
   c) cty + dist. levies.
   d) voc ed.
   e) general matters.

13) other duties as required by law.

-08 ~~Duties of div directors~~
~~a) apportionment of state funds as directed by state bd. of ed.; budgetary control;~~
~~etc~~ . . fiscal & business management.
b)

-09 - services not specifically provided for are under the supervision of the state dept. of educ. Super. shall be resp. for the proper adm. [over]

✱ -10 - The state treasurer is hereby designated and appointed custodian of all funds made available to the state dept. of ed. other than such funds as may be appropriated by the leg, and he is authorized to receive & provide for the proper custody of the same. All such funds shall be disbursed by the treasurer on warrants drawn therefor by the state auditor on requisition of the super.

Art. 3A - see (III)

Art 5 - Cty. Super. of Ed.

Repealed ~~6252 - elected for 4 yrs~~

Repealed 6259 - duties

- apparently does not make policy

Art 6 - Cty School Bd.

6534

III

## Article 3A – State Educational Finance Comm'n

"an officer as contemplated in the constitution" [relevant for removal]

§6246-03 Comm. shall be composed of 6 members who shall be appointed by the governor, subject to confirmation by the Senate

-06- Comm shall select an exec sec. as the adm. officer.

-08. ~~fund~~ said comm. shall distribute and disburse, subject to the provisions of law, such funds as may be appropriated by the leg. . . . for constructing . . . repairing school buildings or other facilities: No funds shall be distributed by said comm. to any school dist. operating a school . . .

* . . until such school dist shall have conclusively shown that it has complied with all the requirements of the laws . . for the operation of schools or school dist's, and until such school dist shall have complied with all the applicables reg. of the comm.

* -09. The comm shall promulgate such rules & regs as shall be nec. and proper to carry out the provisions of this act and such other acts, the adm. of which shall be vested in this comm.

-11. The Comm. subject to any applicable stat. shall formulate policies and approve or

(IV) and construction of all school buildings. also, shall have supervision over all surveys of educational needs made by any school board or bd of ed., and may assist in making such surveys.

-12 appeal to chancery court from comm.

Art 3B. State Aid for Construction of School Facilities

6247-01 - To be administered by State Educational Finance Comm.

-02 "State Public School Building Fund" - amounts as may be paid into said fund by appropriation or, other leg. authorization

-03 $12/child to est. & maintain physical facilities. an additional $3/negro child.

-05 ~~comm~~ no grants accruing to any school dist. shall be expended for any purpose unless such expenditure has been approved by the comm.

07 - Comm may lend school dists. money.

Art 3C. Minimum Program of Education

* §6248-02 - money allotted by State Bd of Ed. for teachers' salaries; transportation of students; driver training;

-03 - State Bd of Ed. shall determine for each county . . . its per cent of the total tax-paying ability of the state

§6248-09 – State bd. of ed. shall ~~mak~~ make regs which they deem necessary for the adm. of the act.

-10. may make ~~cls~~ adjustments in allotments based on attendance

⑧ Art 9A - Consolidation & Reorg of School Districts; Trustees

Art 13 - 1

§6336-11 State Bd of Ed. is authorized, empowered and directed to promulgate rules & regs for transportation of students

[see V]

Art 26 Distribution of School Funds

[§6534-05 - Each year the county supt of ed. and bd of trustees of mun. school dist shall file]

~~A~~ §6534-10 - The state supt of ed. shall ~~[illegible]~~ carefully examine the county school budgets and municipal school district budgets filed with him, as required by this act, for the purpose of determining whether or not same be in compliance with law and for the purpose of determining whether or not the revenues to be made available during the fiscal year will be sufficient to meet expenditures proposed by such budget. If he should find that said budgets are in compliance with the applicable law and that the proposed expenditures will not exceed the amount of revenue to be made available for the support and

⑨ maintenance of the schools during the fiscal year and that the budgets are otherwise sound he shall approve same in writing and shall notify the city super. If, in his opinion . . . . the budget is otherwise unsound, or is not in conformity with the applicable law in any particular, he shall return such budget to the county super. of ed. or the bd of trustees . . . as the case may be, for correction and revision

-16 It shall be the duty of the state bd of ed. to file with the auditor of public accounts such data and information as may be required to enable the said auditor to distribute the common school funds and min. ed. funds to the several counties and separate school districts at the time required. . .

-17 - the state dept of audit is hereby authorized and empowered to postaudit and investigate the financial affairs and all transactions involving the school funds of the county . . . .

Art. 32 Textbooks

§6634 - There is ~~[illegible]~~ hereby established the Mississippi State Textbook Purchasing Board,

⑩ . . . Said board shall consist of 5 members, the governor who shall be ex-officio chairman, the state super. of ed., and 3 members to be appointed by the governor. . . .

§ 6641

a The bd. shall have the power and is hereby authorized:

(a) to promulgate rules and regulations for the purchase, care, use, disposal, distribution, and accounting for all books to be furnished under the terms of this Act and to promulgate such other rules as may be necessary for the proper adm. of this Act

(b) to adopt, contract for, and purchase, . . . textbooks through 12 grades as provided in the school curriculum . . . .

(d) - committees to assist appointed by state super. of ed.

§ 6646 - The State Textbook Board shall adopt and furnish textbooks only for use in those courses set up in the state course of study adopted by the State Bd. of Ed. . . .

6648 - The state textbook fund shall consist of the amount or amounts appropriated by the leg. for the same.

Art 38. Temperance

§6679 - State Temp Comm to be composed of the Atty Gen. and State Super of Ed and sec. of State Bd of Health

6680 - shall cause instruction as they deem proper as to the effects of alcohol.

6681 - State Bd of Ed shall prescribe methods of instruction.

6683 - State Super shall call for essays; $100 prize.

Art 39 Drugs

6685 - State Dept of Ed. to employ a supervisor to supervise teaching of effects

Gov, Atty Gen., State auditor, Sec of State

(V) Art. 23 Taxation

§6518-01 . . . the state bd of ed shall certify to the bd of supervisors of each county the amount of the minimum local ad valorem tax effort in dollars required of each county . . . The bd of supers of each county . . . may levy a tax. . . . The amount of taxes so collected as a result of such levy shall be paid ~~and~~ into the minimum education program fund of the county by the tax collector . . .

-05 - ~~so~~ bd of supers may levy an additional tax.

(*) Miss Constitution

Sec 50 - The governor and all other civil officers of this state shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office

Sec 51 - Judgment shall not extend further than removal from office . . , but the party convicted shall be subject to . . . punishment according to law

Sec 133 - Sec of State - elected for a 4 yr term

Sec 134 - a state treasurer and auditor of public accounts, elected for a 4 yr. term

Sec 173 - Atty Gen: 4 yr term

Sec. 202 - super. of public ed. - elected same as gov. - 4 yrs -

203 bd. of ed.

204. Super of public ed. in each county appointed by the bd of ed. by and with the advice & consent of the senate; term of 4 yrs - leg. can make office elective; or may abolish office

(8) Art 5 & 6

6252-01 – Cty supers of ed. elected as prescribed in 6271-01 (-08) et seq unless such office be made appointive

6271-01 – Cty bd of ed. elected

Art 9A

(6) . . . Except as herein otherwise provided, the trustees of such a municipal separate school district shall be elected by a majority of the governing authorities of the municipality, . . and the term of office [5 years] shall commence on the first Saturday of March following, . . . except if territory are added to the municipal separate school dist, the trustee who came from it [one member] is to be elected by the electors thereof

Title 17 Chapter 10

§4054-01 – The governor is hereby empowered, in accordance with the provisions of section 139 of the Mississippi Constitution of 1890, through the procedure and under the regulations herein prescribed, and for the reasons and causes herein set forth, to remove ~~the~~ any elective county

§6216-12 - State bd. of ed. shall make provisions for the study of hygiene

§6220.5 - It shall be unlawful for any member of the white race to attend any school of high school level or below wholly or partially supported by funds of the State of Miss. which is also attended by a member or members of the Negro race.

§6229-01 - dept of audit of the office of the state auditor shall prescribe accounting system

§6232-73 State Super make rules for Driver Ed.

§6237 - State bd. of ed audit claims against the common school fund

§6247-03 - State grants an additional $3 per negro child in attendance for construction of school buildings

Miss Const Art 8 §207
Separate schools shall be maintained for children of white and colored race.

Ⓒ officer in this state, and every elective officer of any county in this state may be removed from office by the gov. at any time when done in compliance with the reqs hereinafter set forth.

—The reasons or causes for removal from office under the terms of this act shall be: knowingly or willfully failing, neglecting, or refusing to perform any of the duties required of him by law.

-02 - **first** petition by ≥ 30% of electors

-03 ~~then~~ convenes a removal council composed of 3 chancery judges to determine if there is substantial basis for removal

removal election — then, if council thinks there is basis, a county referendum, in effect, takes place.

Title 26 ch 4 art 2 — §6235 — State bd of ed may remove cty supt. for continued neglect of duty, drunkenness, incompetence, or official misconduct

Const §175

All public officers, for willful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury; and upon conviction, shall be removed

㉑ from office, and otherwise punished as prescribed by law.

Title 17 Chap 70 §4053 – officer for conviction of misconduct or misdemeanor the court shall remove him from office

4. Jurisdiction under laws ... Const., Amend.

5. Amount in controversy > $10,000

6 Δ's conspire to deprive π of rights, privileges & immunities

8 et seq

see p5 Rule XI of Leg. Reorg. Act of 1946 provides for HUAC

9. Is void because it violates I, IX, X,

a. is unduly vague, uncertain & broad → inhibits freedom of speech, assembly, etc.

b. exposes private affairs w/o justification

c. creates a gov't mechanism for the sole purpose of forcing disclosure of beliefs resulting in scorn

d. violates Due Process in that it broadly invades protected area of speech, assembly

e. Delegation of authority to HUAC is so vague that it cannot authorize investigations ~~[illegible]~~ which affect free speech

f. usurps jud & exec function

g. violates prohibition of Bills of Attainder

h. sanctions punishment for rights protected by I Amend.

10. under Color of Law Δ's deter π's from free speech

11. No specification to π's of what matters Δ's intend to investigate.

(i) π's will be unable to determine

whether investigation is germane to a leg function or (ii) issues of relevancy or (iii) whether there is so compelling a need for π's to answer q's that infringement of π's const. rights is justified

12. Subpoenas are illegal and void in that HUAC has violated its own rules.

13 HUAC – by exposing intimidates many from exercising const. rights and will continue to do so unless restrained.

14. Hearings are here not intended to serve any leg purpose but are to intimidate

15 Δ's use criminal sanctions to force citizens to disclose their beliefs

16 a π's fear they will be prosecuted
b π's fear that if they comply they will be unable to protect their const. rights

17 unless restrained → irreparable harm

18. Pray for permanent injunction; declaratory j.

A 1410

# Information HUAC

| ADA Voting Record - Oct. 64 Civil Rights A - against F - For | Committee |
|---|---|
| L (52) - A | Edwin E. Willis, Louisiana, St. Martinville, District 3 D |
| C (4) - A | William M. Tuck, Virginia, South Boston " 5 D |
| C (16) - A | Joe R. Pool Texas Dallas A L. D |
| C (44) - A | Richard H. Ichord, Missouri Houston Dis. 8 D. |
| L (72) - F | George F. Senner, Jr. Arizonia, Miami " 3 D. |
| C (0) - A | John M. Ashbrook, Ohio, Johnstown " 17, R |
| L (72) - A | Charles L. Weltner, Georgia, Atlantic, " 5, D |
| C (5) - A | Del M. Clawson, California, Compton " 23 R |
| | John H. Buchanan, Jr. Alabama, Birmingham R |
| A-7, F-1 | |

Edwin E. Willis

Parishes: Assumption, Iberia, Lafayette, Lafourche, St. Martin, St. Mary, Terrebonne, Vermillion. Pop (1960) 387,207

Democrat of St. Martinville, La. - Born: Oct. 2, 1904

Lawyer - married Estelle Bulliard, one child - Bob Willis

State Senate, Jan 1948

U.S. House Nov. 2, 1948 — reelected since. -

Americans For Constitutional Action - ACA-Index

(Conservative Group.)

second session -
88th Congress 1964

P- Positive }
N- Negative } from ACA standpt.

| | | Civil Rights July 2 - 1964 | ACA conservative Index |
|---|---|---|---|
| Willis, | Louisiana | P | 28 |
| Tuck. | Virginia | P | 89 |
| Pool | Texas | P | 76 |
| ? Ichord, | Missouri | N. | 34 |
| Senner | Ariz. | N | 16 |
| Ashbrook, | Ohio | P | 17 |
| Weltner | Georgia | P | 30 |
| Clawson, | Calif. | — | |
| Buchanan | Ala. | — | |

Information HUAC

Contacts for information.

1. Americans for Democratic Action
   N.Y. - OR 57020
   Washington, D.C. - Area Code 202, - 628-2546
   sp.?
   Mr. Leonard Shull

2. Am. Civil Liberties Union. -
   156 20th - 5 Av. - Or 55990 (9th)
   Mr. Alan Reitman, Ass. Ex. Director / Publicity. -
   Mr. Lewin - File Clerk (check speech by Gatting sp.?)

3. Anti-Defamation League. -
   315 Lex Av. (38th) MU 97400
   Mr. Kass - Research Director
   willing to help on research. -
   Mr. Bob Frankel (Research Ass. - Member N.Y. CORE)
   ext. 313 -
   home - 229 W. 16th YU 9-1239

4. The Nat'l Committee to Abolish the House Un-American Activities Comm.
   555 No Western Av., Rm. 2 -
   Los Angeles 4, Calif. P.O. Box 74757
   Phone: Area Code 213 - HOllywood 21329
   (Send for info on HUAC & Congressional opposition to it.)

Willis, HUAC -

24 Page pamphlet -

"Unmasking the Civil Rights Bill"
The Dissenting Views.
of
Hon. E. E. Willis, M.C.
Hon. E.L. Forrester, M.C.
Hon. Wm. M. Tuck, M.C.
Hon. Robert. T. Ashmore, M.C.
Hon, John Dowdy, M.C.
Hon. Basil L. Whitener, M.C.

Members of the House Committee on the Judiciary

Published by:
The Coordinating Committee for
Fundamental American Freedoms
William Loeb, Chairman, J. J. Kilpatrick, Vice-Chairman
John J. Synon, Director.
Suite 530
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Tel. 543-7100

"That this Civil Rights Bill impairs the property rights as well as the civil rights of all Americans is amply demonstrated by the words of these experts. If the bill becomes Law, in the concluding words of their report, our 'fireball of Liberty will spin into darkness.'"

## Biography

Edwin E. Willis,
Parishes: Assumption, Iberia, Lafayette, Lafourche, St. Martin, St. Mary, Terrebonne, & Vermillion. Pop. (1960) 387,207.

Democrat, of St. Martinville, La. Born: Oct. 2, 1904
Lawyer, married Estelle Bulliard, one child, Bob Willis
State Senate, Jan 1948
81st Congress Nov. 2, 1948, reelected since then.
L.L.B. - Loyda U., 1926.
Roman Catholic
Rotarian -

Editorials

The Courier Journal - Barry Bingham Editor & Publisher
Louisville, Ky. - Wed. Feb 17, 1965

"A Good Reason Not to Probe the Kluxers."

. .

"Rep. Charles Weltner of Georgia, the new H.U.A.C. member who proposed the Klan investigation, did so in an effort to see if the committee would correct its long-standing harassment of only those organizations it suspects of left-wing subversion.

"But the A.C.L.U. points out as ~~it~~ has frequently done before that it's the existence & conduct of the committee which are wrong. Such acts of the Ku Klux Klan as it might investigate, physical violence, interference with the right of free speech and assembly, "fall into the category of violations of criminal law which the Department ~~D~~ of Justice has the clear authority to investigate and prosecute" while the committee "has no authority whatsoever."

. . .

Anne Braden

1. "HUAC: Block to Integration"
   Rough first draft - 32 p typewritten (1964)
   ACLU - File # A1420
   Excellent summary of HUAC history and relation to segregation groups.

ACLU

2. House Un-American Activities Committee: Bulwark of Segregation."

48 p. pamphlet published by

National Committee to Abolish the House Un-Am. Act. Comm.
555 N. Western Ave. #2
Los Angeles 4, Calif. HO 21329

East Coast Regional Office
N.Y. Council to Abolish HUAC
150 W. 34th St. Rm 442
N.Y.C. 1, PE 63228

Write →

Clarence Pickett
P.O. Box 423
Cathedral Station
N.Y.C. 25, N.Y. } Distributor.

Anne Braden - Author "The Wall Between"
Editor "The Southern Patriot" - Southern Conference Educational Fund, Inc.

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HUTCHINSON, DAVID, CROCKETT et.al. VS. STATE OF NEW YORK 1965
(DISCRIMINATION IN HIRING PRACTICES)

Wisconsin

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

PEOPLE OF THE STATE OF NEW YORK, :

Respondent :

:

-vs-

: **PETITION FOR REMOVAL**

DAVID CROCKETT HUTCHINSON, ROGER KNAPP, :
RONALD DAVIDSON, CHARLES C. GOLDSMITH,
SUSAN TYLER, CAROL M. COSITORE, FRANK :
BRITTON, JR., ELIZABETH MILLER, DONNA
DRAKE, PATRICIA STEEN, DAVID MILLER, :
EDDIE PETERSON, EDWIN DAY, ROBERT S.
LUBETSKY, JOHN L. McDOWELL, ROBERT L. :
TENNEY, PAUL D. LEONARD, BYRON FOX,
IRWIN DEUTSCHER, CHARLES E. SPARKS, :
PHYLLIS JOHNSON,

:

Defendant Petitioners.

- - - - - - - - - - - - - - - - - - - - -x

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK:

Petitioners, by their attorney, Faith A. Seidenberg, respectfully show:

1. Petitioners are the defendants in the above-entitled action. Said action, a state criminal proceeding, was brought against petitioners by the District Attorney of the County of Onondaga, New York. Trial of said action has been set for June 7, 1965.

2. Faith A. Seidenberg, attorney for petitioners, is fully familiar with this action and with the facts out of which it arose. The pertinent facts are set forth hereafter.

3. This is a petition for removal pursuant to 28 U.S.C.A. §§ 1443 and 1446. Section 1443 provides

as follows:

> "§ 1443. Civil rights cases
>
> "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> "(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law. June 25, 1948, c. 646, 62 Stat. 938."

Removal to this Court is sought on the following grounds:

(a) Because of certain acts and statements by the prosecuting attorney for the State of New York and certain acts by the state court pursuant to such acts and statements by the prosecution (as described below), there is probable cause for petitioners, their counsel, and this Court to believe that petitioners have been denied and will not be able effectively to enforce in the state courts their rights to reasonable bail, to due process of law, and to equal protection of the laws. (28 U.S.C.A. § 1443(1).)

(b) The acts for which petitioners are being prosecuted were done "under color of authority" (or protection) granted and guaranteed to petitioners by the Federal Constitution and by the Federal Civil Rights Act, as is more fully set forth below. (28 U.S.C.A. § 1443(2).)

4. Petitioners are being prosecuted for the following crimes and offenses:

(a) Roger Knapp and Ronald Davidson - arrested March 15, 1965, and charged with violation of § 722(2) (Disorderly conduct) and § 2036 (Unlawful intrusion on real property) of the New York Penal Law.

(b) Charles C. Goldsmith and Susan Tyler - arrested March 16, 1965, and charged with violating § 722(2).

(c) Carol M. Cositore and Frank Britton - arrested March 17, 1965, and charged with violating § 2036.

(d) Elizabeth Miller, Donna Drake, Patricia Steen, and David Crockett Hutchinson - arrested March 19, 1965, and charged with violating §§ 722(2) and 2036.

(e) David Miller - arrested March 19, 1965, and charged with violating § 2036.

(f) Eddie Peterson - arrested April 7, 1965, and charged with violating § 2036.

(g) Edwin Day - arrested April 8, 1965, and charged with violating §§ 722(2), (3), and (4), 2036, 1530(4) (Public nuisance), and 242 (Assault in the second degree) of the Penal Law.

(h) Robert S. Lubetsky, John L. McDowell, Robert L. Tenney, and Paul D. Leonard - arrested April 8, 1965, and charged with violating §§ 722(2), (3), and (4), 2036, and 1530(4).

(i) Byron Fox, Irwin Deutscher, Charles E. Sparks, and Phyllis Johnson - arrested April 8, 1965, and charged with violating §§ 722(2), (3), and (4) and 2036.

5. The arrests and charges against petitioners set forth in the preceding paragraph arose out of the following facts:

(a) For more than 1 1/2 years prior to the prosecutions herein, negotiations had been in progress between the Niagara Mohawk Power Corp. (Niagara Mohawk) and the Congress of Racial Equality (CORE). The negotiations occurred as the result of a dispute between CORE and Niagara Mohawk over alleged racial discrimination by the latter in its hiring policy. CORE had submitted a carefully researched and documented complaint to Niagara Mohawk demonstrating the existence of a patent pattern and practice of discrimination against Negroes in its hiring policies. The company had been urged to cease its discriminatory hiring by the Urban League, by the Catholic Interracial Counsel, by the Chamber of Commerce of Syracuse, and by the National Association for the Advancement of Colored People (NAACP) as well as by CORE. Although there was strong sentiment in the Negro community of Syracuse against the well-known discriminatory hiring practices of Niagara Mohawk, great restraint was exercised by that community and by its leading organizations: for more than 18 months prior to March, 1965, negotiations were conducted without demonstrations of any kind being conducted against the company, even though reasonably conducted picketing and handbill demonstrations are perfectly legal activities protected by the First

Amendment to the Federal Constitution. Throughout this period Niagara Mohawk adamantly refused to make any change whatever in its hiring policies.

(b) Finally, after repeated refusals on the part of Niagara Mohawk to negotiate the dispute in good faith and in order to provide a peaceful, orderly, and nonviolent outlet for the extreme frustration and anger against the company which had built up steadily over the past year and one-half in the Negro community of Syracuse, CORE began to picket the main office of Niagara Mohwak daily in a well-organized, well-disciplined, peaceful, nonviolent, and otherwise reasonable manner.

(c) On March 15, 1965, the first two defendants above named were arrested at the instigation of officials of Niagara Mohawk for disorderly conduct under § 722 (which can occur only in a "public place") and for unlawful intrusion upon real property under § 2036 (which can occur only on "private property"). Both charges arose out of the same conduct.

(d) On March 19, 1965, a Friday, five more defendants were arrested for the same two legally incompatible charges. The Assistant District Attorney in charge of the prosecution consistently requested $500 bail on each defendant regardless of the minor character of the charges and regardless of the character qualifications and financial capabilities of the individual defendants involved. He revealed his true motivation in so acting and his subservience to Niagara Mohawk when he stated, on the record, the following (quotation is from Minutes attached as Exhibit A, pp. 7-8):

> "From what I understand, this is going to be a continuing affair until Niagara Mohawk Company succumbs to their demands and we are going to have trouble unless bail is set on all these cases." (Exhibit A, p. 7.)
>
> "These people are interfering with progress and the business of Niagara Mohawk Company and the only way it's going to stop is to impose bail of $500." (Exhibit A, p. 8.)

(e) The cases of all defendants were adjourned until the following Monday (March 22) in order to give a Mr. DeLuca, an employee of the VERA Foundation (a nonprofit organization working in cooperation with the courts of New York for the purpose of establishing less harsh bail procedures than have heretofore been the usual practice), time to investigate the personal financial circumstances and character qualifications of the various defendants. Pending his report, bail was set at $500 for each defendant, even though the court was shown that each defendant was a reputable local resident without any record whatever of prior criminal conviction. Mr. DeLuca did not appear the following Monday, or ever again. The state court repeatedly failed to reexamine the unreasonably high bail previously established despite repeated requests by counsel for the defendants that it do so and that counsel be given an opportunity to demonstrate that the character and reputation of each defendant unquestionably makes the requirement of any bail whatever unreasonable in view of the fact that each of them is so established in the community and vouched for by other reputable citizens that his appearance at trial is, for all practical purposes, an absolute certainty.

(f) On April 7, 1965, another of the defendants was arrested for sitting by himself on the steps of a vice-president of Niagara Mohawk waiting to talk to the company official about its dispute with CORE. Although he was simply sitting and waiting, he was arrested and charged with violating § 2036 (Unlawful intrusion upon real property). Although he was arraigned after 11:00 P.M. and the prosecution was well aware that bail would be extremely difficult, if not impossible, to obtain at such a late hour and notwithstanding the minor character of the charge, both the District Attorney of Onondaga County, Francis Moran, and his chief trial counsel, Edward Gerber, appeared and demanded that bail be set at $500. Bail was fixed at that amount without any consideration being given by the court to the character, reputation, occupation, and financial circumstances of the defendant.

(g) On the morning of April 8, 1965, five more defendants were arrested. One of them was charged with eight crimes and offenses; his bail was fixed at $5,500. Obviously this figure was computed on the basis of the number of charges made and not upon the basis of their nature or the defendant's character and reputation or upon any inquiry whatever as to what sum,if any, might reasonably have been necessary to insure the presence of this particular defendant at trial. The other four defendants were charged with four crimes and offenses each; bail for each of them was fixed at $1,000, again obviously upon the basis of the number of charges alone and without any inquiry whatever into any of the circumstances which would have been relevant to the determination of the sum, if any, necessary in each particular case to insure the presence of that particular defendant at trial. All five defendants, with the exception of the first, were local residents, and none of them had ever been convicted of a crime.

(h) On the afternoon of April 8, 1965, four more of the defendants were arrested for blocking a driveway and charged with three separate crimes and offenses each. Although two of these defendants were professors at Syracuse University and long-time residents of Syracuse with outstanding reputations in the community and no record of prior conviction, the Assistant District Attorney, Edward Gerber, and the court both refused to take into consideration the personal qualifications and financial circumstances of any of the defendants. Bail was set at $500 for each of them. The personal circumstances of each of these defendants were such that the conclusion would have been inescapable that they would all unquestionably appear for trial if the court had been willing to consider to the facts. But it would not do so, and it persists in its refusal to the date hereof. (See Exhibit B attached.)

(i) On April 10, 1965, one of the defendants was arrested at Grace Episcopal Church in Syracuse and charged with resisting arrest two days before. Although it is so unusual as to be unheard of for a warrant to issue for a misdemeanor, a warrant was issued for this defendant's arrest charging him with resisting arrest by counselling someone else, who was immobile and under a car at the time, ~~at the time~~ to "resist arrest", a factual impossibility. When the arresting officers asked his wife where he could be found, she told them he could be found in church, where he had gone alone. Despite this knowledge and despite the fact that there was no reason whatever for the police to believe this defendant to be violent or in any way dangerous (he is a Ph. D. candidate at Syracuse University), three police cars and a paddy wagon were dispatched to the church to accomplish the arrest. He was alone in church when arrested and made no attempt at resistance. At his arraignment that morning, he refused bail on the ground that the charges against him were utterly without basis in fact and brought solely for the purpose of harassing him for his participation in demonstrations against Niagara Mohawk. He was placed in jail and proceeded to go on a hunger strike in protest at the unfairness of the treatment he had received at the hands of the police and prosecuting officials. At this point the prosecuting attorney, Mr. Edward Gerber, who had previously been adamant about the necessity of bail, changed his mind completely about the desirability and necessity of keeping the defendant in jail in the absence of bail; he tried very hard to get the defendant out. When the defendant refused to leave, Gerber demanded a psychiatric examination of the defendant for the apparent purpose of frightening him into leaving the jail, although he had no authority to authorize such an examination. When a psychiatrist reported that the defendant was mentally sound, Gerber then moved the case for trial without consent of defense counsel. Because defense counsel pointed out the complete illegality of such a motion, the case was not heard. (Minutes attached as Exhibit C.)

(j) On April 24, 1965, five other defendants were arrested and charged with violating § 2036 (a misdemeanor). These defendants were part of a team of mediators attempting to resolve the dispute between CORE and Niagara Mohawk. Their arrest took place on a Saturday night. Notwithstanding the unusual hour of the arrest and the minor nature of the charge, these defendants were arrested not by an ordinary police officer, but by the Syracuse Chief of Police and the Assistant District Attorney, Mr. Edward Gerber. Since the circumstances of the arrests give no indication why such high-ranking officials were necessary to accomplish the arrests, the only explanation for the presence of such officials is the perfectly obvious one that they were there at the instigation of officials of Niagara Mohawk. And it is equally obvious that the arrests were made at the urging of Niagara Mohawk for the purpose of intimidating the mediators and CORE demonstrators and making them fearful of conducting their picket line against the company, lest they be arrested at strange hours on baseless charges and held pending the production of unreasonable and arbitrary amounts of bail. The pattern and circumstances of all of these arrests and the treatment of the defendants at the hands of the prosecuting attorneys and the state courts thereafter demonstrates beyond reasonable doubt a purpose on the part of Niagara Mohawk, the Syracuse police department, and the District Attorney's office (with which purpose the state court cooperated and which it in fact implemented by the fixing of unreasonable, arbitrary, and intentionally punitive bail) to harass, intimidate, and punish the CORE demonstrators (by the conscious misuse of arrest and arraignment procedures) for exercising their First Amendment rights by picketing

Niagara Mohawk. Such punitive and harassing purpose was admitted by an assistant district attorney in open court (see ¶5(d) above), and notwithstanding such patently illegal and unconstitutional purpose, the state court repeatedly granted the prosecution's motions for admittedly arbitrary and intentionally punitive bail and ignored the repeated attempts of defense counsel to explain the facts relevant to reasonable bail in each individual case.

6. The facts set forth above demonstrate clearly that there is at least cause for reasonable doubt as to whether the petitioners herein will receive altogether fair and unbiased treatement in the state trial court. That court has already violated fundamental constitutional rights of the petitioners in a most flagrant way. It has fixed arbitrary, unreasonable, and excessive bail for the purpose of imposing punishment and intimidation prior to trial in violation of their rights under the Eighth, Fifth and Fourteenth Amendments to the Federal Constitution. Imposition of bail excessive in the circumstances and unnecessary to insure the presence of the defendant at trail violates the Eighth and Fourteenth Amendments. Imposition of punishment prior to conviction (whether in the form of physical incarceration without necessity therefore, in the form of excessive bail, or in any other form) violates any reasonable conception of due process of law under the Fifth and Fourteenth Amendments. Such flagrant violation of fundamental constitutional rights places a serious taint upon any further proceedings in the state court which has perpetrated them, if it does not invalidate

these proceedings entirely. There is at the very least probable cause to believe that other acts based upon bias against these defendants will take place at a trial conducted by the same judges who have already demonstrated an unfortunate lack of neutrality and judicial restraint toward the petitioners herein. The federal judicial system was established to protect citizens of this country from the possibility of unfair treatment in state courts, which in some instances are susceptible of various forms of local political influence. Congress knew that such protection would occasionally be necessary to protect fundamental rights. In 28 U.S.C.A. § 1443, Congress has authorized this Court to assume removal jurisdiction over "any" criminal proceeding in which "any person is denied . . . [in a state court] a right under any law providing for the equal civil rights of citizens." (Emphasis supplied.) We submit that the Constitution is "any law" within the meaning of that provision. We submit that the federal civil rights statutes (42 U.S.C.A. §§1983, 1985, 1986. See also 28 U.S.C.A. § 1343) are "any law" within the meaning of that provision and that those civil rights statutes have been violated by the Syracuse police, the office of the District Attorney of Onondaga County, the courts of New York State, and Niagara Mohawk acting consciously in concert to punish these petitioners unjustly prior to trial and thereby to treat them differently from other persons charged with minor offenses in violation of their right to equal and fair protection of federal and state laws.

7. The prosecuting authorities have admitted in open court their purpose to use unreasonably high bail to intimidate petitioners and others. The state court accepted their motions for such bail knowing it to be excessive and unnecessary to insure the presence of the various defendants at trial. Obviously Niagara Mohawk is behind this course of action and is using its influence over the local district attorney to bludgeon petitioners and others of CORE into capitulating in the private dispute between the utility and the civil rights organization. The petitioners may have committed some minor offenses, and they may not. But this guilt or innocence is utterly unrelated to their right to reasonable bail (or none where it is unnecessary), to due process of law, and to be treated equally with other persons charged with the same offenses who are not connected with civil rights activity. Congress established this Court and maintains it for the purpose of insuring full protection of the rights of all who come within its jurisdiction. To fall within the removal jurisdiction of 28 U.S.C.A. § 1443 petitioners need only demonstrate that they either are (have been) deprived of their federal civil rights or "cannot" (will be unable in the future to) enforce such rights. Since it is virtually impossible to prove conclusively that one will be unable to enforce one's fundamental constitutional rights in the future, all that can reasonably

be expected in the way of proof in a case such as this under § 1443 is evidence that civil rights have been violated in the state courts and that there is no reason to believe that the state courts and prosecutors who committed the earlier violations have had a change of heart. Such a showing has definitely been made herein. To expect anything more, to set a test so stringent as not to have been met in this case, would be to demand the impossible. Section 1443 does not establish impossible standards. Its requirements have been met in this case. Petitioners are praying for the protection of this Court to safeguard their procedural rights under the Constitution; they have properly invoked its jurisdiction; this Court should take their case.

8. Copies of all process, pleadings, and orders served upon petitioners are filed herewith and attached hereto.

WHEREFORE, petitioners pray that these actions be removed.

Dated: May , 1965

Faith A. Seidenberg
Attorney for Petitinners

Sworn to before me this --
day of May, 1965.

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - -X

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-vs-

DAVID CROCKETT HUTCHINSON, ROGER KNAPP, RONALD DAVIDSON, CHARLES C. GOLDSMITH, SUSAN TYLER, CAROL M. COSITORE, FRANK BRITTON, JR., ELIZABETH MILLER, DONNA DRAKE, PATRICIA STEEN, DAVID MILLER, EDDIE PETERSON, EDWIN DAY, ROBERT S. LUBETSKY, JOHN L. McDOWELL, ROBERT L. TENNEY, PAUL D. LEONARD, BYRON FOX, IRWIN DEUTSCHER, CHARLES E. SPARKS, PHYLLIS JOHNSON, REV. EMORY PROCTOR, PATRICIA SANDRO, ESTELLA DELOACH, JAMES [illegible], LEROY WRIGHT, JOHN WILLIAMS, MARY ANN RUTLEDGE, LEON RUSSELL, MARILYN SAFIR,

Defendant Petitioners.

- - - - - - - - - - - - - - - - - - - - - - - - -X

PETITION FOR REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK:

Petitioners, by their attorney, Faith A. Seidenberg, respectfully show:

1. Petitioners are the defendants in a number of state criminal proceedings. Said state criminal proceedings were brought against petitioners by the District Attorney of the County of Onondaga, New York. Trial of said proceedings has been set for June 8, 1965.

2. Faith A. Seidenberg, attorney for petitioners, is fully familiar with this action and with the facts out of which it arose. The pertinent facts are set forth hereafter.

3. This is a petition for removal pursuant to 28 U.S.C.A. §§ 1443 and 1446. Section 1443 provides

as follows:

> "§ 1443. Civil rights cases
>
> "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> "(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law. June 25, 1948, c. 646, 62 Stat. 938."

Removal to this Court is sought on the following grounds:

(a) Because of certain acts and statements by the prosecuting attorney for the State of New York and certain acts by the state court pursuant to such acts and statements by the prosecution (as described below), there is probable cause for petitioners, their counsel, and this Court to believe that petitioners have been denied and will not be able effectively to enforce in the state courts their rights to reasonable bail, to due process of law, and to equal protection of the laws. (28 U.S.C.A. § 1443(1).)

(b) The acts for which petitioners are being prosecuted were done "under color of authority" (or protection) granted and guaranteed to petitioners by the Federal Constitution and by the Federal Civil Rights Act, as is more fully set forth below. (28 U.S.C.A. § 1443(2).)

following crimes and offenses:

(a) Roger Knapp and Ronald Davison - arrested March 15, 1965, and charged with violation of § 722(2) (Disorderly conduct) and § 2036 (Unlawful intrusion on real property) of the New York Penal Law.

(b) Charles C. Goldsmith and Susan Tyler - arrested March 16, 1965, and charged with violating § 722(2).

(c) Carol M. Cositore and Frank Britton - arrested March 17, 1965, and charged with violating §2036.

(d) Elizabeth Miller, Donna Drake, Patricia Steen, and David Crockett Hutchinson - arrested March 19, 1965, and charged with violating §§ 722(2) and 2036.

(e) David Miller - arrested March 19, 1965, and charged with violating §2036.

(f) Eddie Peterson - arrested April 7, 1965, and charged with violating §2036.

(g) Edwin Day - arrested April 8, 1965, and charged with violating §§ 722(2), (3), and (4), 2036, 1530(4) (Public nuisance), and 242 (Assault in the second degree) of the Penal Law.

(h) Robert S. Lubetsky, John L. McDowell, Robert L. Tenney, and Paul D. Leonard - arrested April 8, 1965, and charged with violating §§ 722(2), (3), and (4), 2036, and 1530(4).

(i) Byron Fox, Irwin Deutscher, Charles E. Sparks, and Phyllis Johnson - arrested April 8, 1965, and charged with violating §§ 722(2), (3), and (4) and 2036.

(j) Rev. Emory Proctor, Patricia Sandro, Robert L. Tenney, Estella DeLoach, and James Hope - arrested May 12, 1965, and charged with violating §§ 722(2) and § 2036.

(k) LeRoy Wright and John Williams - arrested May 12, 1965, and charged with violating § 722(2).

(l) Mary Ann Rutledge, Leon Russell, Marilyn Safir and Patricia Sandro - arrested May 17, 1965, and charged with violating § 2036.

5. The arrests and charges against petitioners set forth in the preceding paragraph arose out of the following facts:

(a) For more than 1 1/2 years prior to the prosecutions herein, negotiations had been in progress between the Niagara Mohawk Power Corp. (Niagara Mohawk) and the Congress of Racial Equality (CORE). The negotiations occurred as the result of a dispute between CORE and Niagara Mohawk over alleged racial discrimination by the latter in its hiring policy. CORE had submitted a carefully researched and documented complaint to Niagara Mohawk demonstrating the existence of a patent pattern and practice of discrimination against Negroes in its hiring policies. The company had been urged to cease its discriminatory hiring by the Urban League, by the Catholi Interracial Counsel, by the Chamber of Commerce of Syracuse, and by the National Association for the Advancement of Colored People (NAACP) as well as by CORE. Although there was strong sentiment in the Negro community of Syracuse against the well-known discriminatory hiring by that community and by its leading organisations; for more than 18 months prior to March, 1965, negotiations were conducted without demonstrations of any kind being conducted against the company, even though reasonably conducted picketing and handbill demonstrations are perfectly legal activities protected by the First Amendment to the Federal Constitution. Throughout this period Niagara Mohawk adamantly refused to make any change whatever in its hiring policies.

(b) Finally, after repeated refusals on the part of Niagara Mohawk to negotiate the dispute in good faith and in order to provide a peaceful, orderly, and non-violent outlet for the extreme frustration and anger against the company which had built up steadily over the past year and one-half in the Negro community of Syracuse CORE began to picket the main office of Niagara Mohawk daily in a well-organized, well-disciplined, peaceful, nonviolent, and otherwise reasonable manner.

(c) On March 15, 1965, the first two defendants above named were arrested at the instigation of officials of Niagara Mohawk for disorderly conduct under § 722 (which can occur only in a "public place") and for unlawful intrusion upon real property under §2036 (which can occur only on "private property"). Both charges arose out of the same conduct.

(d) On March 19, 1965, a Friday, five more defendants were arrested for the same two legally incompatible charges. The Assistant District Attorney in charge of the prosecution consistently requested $500 bail on each defendant regardless of the minor character of the charges and regardless of the character qualifications and financial capabilities of the individual defendants involved. He revealed his true motiviation in so acting and his subservience to Niagara Mohawk when he stated, on the record, the following (quotation is from Minutes attached as Exhibit A, pp. 7-8):

> "From what I understand, this is going to be a continuing affair until Niagara Mohawk Company succumbs to their demands and we are going to have trouble unless bail is set on all these cases." (Exhibit A, p. 7)
>
> "These people are interfering with progress and the business of Niagara Mohawk Company and the only way it's going to stop is to impose bail of $500." (Exhibit A, p. 8.)

(e) The cases of all defendants were adjourned until the following Monday (March 22) in order to give a [illegible] DeLuca, an employee of the VERA Foundation (a non-profit organisation working in cooperation with the courts of New York for the purpose of establishing less harsh bail procedures than have heretofore been the usual practice), time to investigate the personal financial circumstances and character qualifications of the various defendants. Pending his report, bail was set at $500 for each defendant, even though the court was shown that each defendant was a reputable local resident without any record whatever of prior criminal conviction. Mr. DeLuca did not appear the following Monday, or ever again. The State court repeatedly failed to re-examine the unreasonably high bail previously established despite repeated requests by counsel for the defendants that it do so and that counsel be given an opportunity to demonstrate that the character and reputation of each defendant unquestionably makes the requirement of any bail whatever unreasonable in view of the fact that each of them is so established in the community and vouched for by other reputable citizens that his appearance at trial is, for all practical purposes an absolute certainty.

(f) On April 7, 1965, another of the defendants was arrested for sitting by himself on the steps of the home of a vice-president of Niagara Mohawk waiting to talk to the company official about its dispute with CORE. Although he was simply sitting and waiting, he was arrested and charged with violating §2036 (Unlawful intrusion upon real property). Although he was arraigned after 11:00 P.M. and the prosecution was well aware that bail would be extremely difficult, if not impossible, to obtain at such a late hour and notwithstanding the minor character of the charge, both the District Attorney of Onondaga County, Francis Moran, and his chief trial counsel, Edward Gerber, appeared and demanded that bail be set at $500. Bail was fixed at that amount without any consideration being given by the court to the character, reputation, occupation, and financial circumstances of the defendant.

(g) On the morning of April 8, 1965, five more defendants were arrested. One of them, a diabetic, was in a coma or semi-comatose state at the time of his arrest. He was charged with eight crimes and offenses; his bail was fixed at $5,500. Obviously this figure was computed on the basis of the number of charges made and not upon the basis of their nature or the defendant's character and reputation or upon any inquiry whatever as to what sum, if any, might reasonably have been necessary to insure the presence of this particular defendant at trial. The other four defendants were charged with four crimes and offenses each; bail for each of them was fixed at $1,000, again obviously upon the basis of the number of charges alone and without any inquiry whatever into any of the circumstances which would have been relevant to the determination of the sum, if any, necessary in each particular case to insure the presence of that particular defendant at trial. All five defendants, with the exception of the first, were local residents, and none of them had ever been convicted of a crime.

(h) On the afternoon of April 8, 1965, four more of the defendants were arrested for blocking a driveway and charged with three separate crimes and offenses each. Although two of these defendants were professors at Syracuse University and long-time residents of Syracuse with outstanding reputations in the community and no record of prior conviction, the Assistant District Attorney, Edward Gerber, and the court both refused to take into consideration the personal qualifications and financial circumstances of any of the defendants. Bail was set at $500 for each of them. The personal circumstances of each of these defendants were such that the conclusion would have been inescapable that they would all unquestionably appear for trial _if_ the court had been willing to consider the facts. But it would not do so, and it persists in its refusal to the date hereof. (See Exhibit B attached.)

was arrested at Grace Episcopal Church in Syracuse and charged with resisting arrest two days before. Although it is so unusual as to be unheard of for a warrant to issue for a misdemeanor, a warrant was issued for this defendant's arrest charging him with resisting arrest by counselling someone else, who was immobile and under a car at the time to "resist arrest". (Resisting arrest simply cannot possibly be accomplished by mere words, let alone by words uttered by someone who is not being arrested.) When the arresting officers asked his wife where he could be found, she told them he could be found in church, where he had gone alone. Despite this knowledge and despite the fact that there was no reason whatever for the police to believe this defendant to be violent or in any way dangerous (he is a Ph. D. candidate at Syracuse University) three police cars and a paddy wagon were dispatched to the church to accomplish the arrest. He was alone in church when arrested and made no attempt at resistance. At his arraignment that morning, he refused bail on the ground that the charges against him were utterly without basis in fact and brought solely for the purpose of harassing him for his participation in demonstrations against Niagara Mohawk. He was placed in jail and proceeded to go on a hunger strike in protest at the unfairness of the treatment he had received at the hands of the police and prosecuting officials. At this point the prosecuting attorney, Mr. Edward Gerber, who had previously been adamant about the necessity of bail, changed his mind completely about the desirability and necessity of keeping the defendant in jail in the absence of bail; he tried very hard to get the defendant out. When the defendant refused to leave, Gerber demanded a psychiatric examination of the defendant for the apparent purpose of frightening him into leaving the jail, although he had no authority to authorize such an examination. When a psychiatrist reported that the defendant was mentally sound, Gerber then moved the case for trial without consent of defense counsel. Because defense counsel pointed out the complete illegality of such a motion, the case was not heard. (Minutes attached as Exhibit C.)

(j) On April 24, 1965, five other defendants were arrested and charged with violating § 2036 (a misdemeanor). These defendants were part of a team of mediators attempting to resolve the dispute between CORE and Niagara Mohawk. Their arrest took place on a Saturday night. Notwithstanding the unusual hour of the arrest and the minor nature of the charge, these defendants were arrested not by an ordinary police officer, but by the Syracuse Chief of Police and the Assistant District Attorney, Mr. Edward Gerber. Since the circumstances of the arrests give no indication why such high-ranking officials were necessary to accomplish the arrests, the only explanation for the presence of such officials is the perfectly obvious one that they were there at the instigation of officials of Niagara Mohawk. And it is equally obvious that the arrests were made at the urging of Niagara Mohawk for the purpose of intimidating the mediators and CORE demonstrators and making them fearful of conducting their picket line against the company, lest they be arrested at strange hours on baseless charges and held pending the production of unreasonable and arbitrary amounts of bail.

(k) On April 26, 1965, one of the petitioners was picked up by the police and held under court order as a material witness for the state although he had voluntarily given them a statement. His bail was fixed at $10,000.00. Although his attorney protested to the County Court Judge that this defendant was a local resident, who resided with his wife and family, and had absolutely no record of conviction, his bail was nevertheless fixed at $10,000. The judge stated, as his only reason for choosing such an extravagant and punitive sum, that the defendant had "bad companions". (Minutes attached, Exhibit D.)

(k-1) On the 12th day of May, 1965, seven more defendants were arrested at the Onondaga County War Memorial Auditorium, where Niagara Mohawk was putting on an exhibit. Two of the defendants were arrested when they complained at being refused admittance to the show. These two were Negroes. A reporter for Newsweek, Gregg Harris, also a Negro, was similarly refused admittance to the Auditorium and had to call his New York office and have officials of his magazine intervene in order for him to be admitted to the exhibit.

(l) On the evening of May 17, 1965, four more defendants were arrested while sitting on the steps of the home of Gustav Watters, a Vice-President of Niagara Mohawk. Mr. Watters was involved in the dispute between CORE and Niagara Mohawk. These people were never asked to leave by Mr. Watters himself, who was out of town, nor by Mrs. Watters, who was at home. And in fact the affidavit against them was made by a Mr. Blaisdell, who is an official in Niagara Mohawk but who does not live at Mr. Watters' address. All four of these people were put in $500.00 bail. Although two of the defendants were residents of and worked in Syracuse, the District Attorney said that it would not be fair to release them without bail because they would have to set bail on the two other defendants, who were from Selma, Alabama. Thus the only reason given for fixing bail upon these defendants was that bail was being fixed for other out-of-state defendants. Clearly such absurd reasoning, involving a kind of punishment for association, was worse than none at all. Such bizarre misunderstanding of the purposes for which bail can validly be fixed defies comprehension.

(m) The pattern and circumstances of all of these arrests and the treatment of the defendants at the hands of the prosecuting attorneys and the state courts thereafter demonstrates beyond reasonable doubt a purpose on the part of Niagara Mohawk, the Syracuse police department, and the District Attorney's office (with which purpose the state court cooperated and which it in fact implemented by the fixing of unreasonable, arbitrary, and intentionally punitive bail) to harass, intimidate, and punish the CORE demonstrators (by the conscious misuse of arrest and arraignment procedures) for exercising their First Amendment rights by picketing Niagara Mohawk. Such punitive and harassing purpose was admitted by an assistant district attorney in open court (see Par. 5(d) above), and notwithstanding such patently illegal and unconstitutional purpose, the state court repeatedly granted the prosecution's motions for admittedly arbitrary and intentionally punitive bail and ignored the repeated attempts of defense counsel to explain the facts relevant to reasonable bail in each individual case.

6. (a) A subsequent episode illustrates dramatically the state of utter irrationality and near-hysteria which has overcome the local police and courts on the subject of the CORE-Niagara Mohawk dispute.

(b) In the late afternoon of May 12, 1965, a man by the name of Richard Healy was stopped by police on Erie Blvd., just past Thompson Road in Dewitt, New York, ostensibly for a minor traffic infraction and told to pull over. Mr. Healy, a resident of St. Louis, had arrived in the city several hours earlier, with his wife and his cousin, and was on the way to the New York World's Fair in New York City. He had stopped at a nearby motel, and his wife, who wasn't feeling well, stayed there while he went out to have his car serviced at a gas station.

(c) After he was stopped and asked to get out of his car, he was questioned minutely by the Chief of Police of Dewitt as to whether he was a member of CORE (Congress of Racial Equality), whether he had come to Syracuse to demonstrate, and what he knew about Niagara Mohawk. Mr. Healy is a Negro. All of these questions were confusing to him, as he was not a member of CORE, but in any case they were totally irrelevant to any traffic infraction. His car was then searched and the police, finding nothing, also searched his person. He was then taken before Judge Kimball and booked not only for a traffic infraction but for vagrancy and put in $200.00 bail, although he had produced proof of ownership of the [illegible] came do- to [illegible] to bail him out but was [illegible] vagrancy [illegible] in $400.00 bail [illegible] $400.00 for his bail, but other money as well. The cousin was also arrested for vagrancy.

(e) Mr. Healy, not having another $400.00 for his wife and his cousin, flagged down a passing car and told his frightening story. It later transpired that his car had been impounded, but he didn't know that at the time. He was driven to the CORE office for help. Mrs. Faith Seidenberg, attorney for CORE and also a board member of ACLU (American Civil Liberties Union), immediately called Judge Kimball to check out the facts, and then called the police, the District Attorney of Onondaga County, and attorneys Gordon MacArthur and Gerald Stern, both ACLU attorneys. Eventually all the parties assembled back at Judge Kimball's Court at about 10:30 P.M. The Dewitt Police had brought up Mr. Healy's wife and cousin from jail and the vagrancy charges were dropped on motion of Mr. Francis Moran, the District Attorney.

(f) Mr. Healy then pleaded guilty to the traffic infraction and paid a $10.00 fine, and then paid another $10.00 to get his car back.

(g) Although Mr. Healy is not one of the petitioners herein, the disgraceful treatment he received at the hands of the local police officials and courts without the slightest cause merely because he was a Negro from out-of-state (and therefore suspected of being in the county on behalf of CORE in connection with its dispute with Niagara Mohawk) shows in the clearest possible way how vicious and unreasoning the local police and judges have become where they even suspect that the CORE-Niagara Mohawk dispute may be indirectly involved. Simply being a Negro from outside the state is enough to provoke (1) illegal arrests (the vagrancy arrests of three persons), (2) illegal searches (of all three people and of Mr. Mealy's car), (3) excessive, unreasonable, arbitrary, and intentionally punitive bail, and (4) totally unnecessary and unjustified imprisonment. In this case it took three defense attorneys and the District Attorney of Onondaga County to get Judge Kimball to rescind his various utterly illegal and unconstitutional actions against these three innocent Negro tourists. They would have stayed in jail indefinitely if volunteer counsel had not come to their assistance, since bail was intentionally escalated beyond their ability to pay it (to $600) although the charge was a mere minor traffic offense. And heaven only knows what kinds of illegal action would have been taken against these poor people if by some mischance they had happened to be associated with CORE in its dispute against Niagara Mohawk. Guilt by association - even suspected association - has become the order of the day with the police and local courts of Onondaga County, New York. It would be a gross injustice for the present petitioners to be tried in those courts.

7. The facts set forth above demonstrate clearly that there is at least cause for reasonable doubt as to whether petitioners herein will receive altogether

fair and unbiased treatment in the state trial court. That court has already violated fundamental constitutional rights of the petitioners in a most flagrant way. It has fixed arbitrary, unreasonable, and excessive bail for the purpose of imposing punishment and intimidation prior to trial in violation of their rights under the Eighth, Fifth and Fourteenth Amendments to the Federal Constitution. Imposition of bail excessive in the circumstances and unnecessary to insure the presence of the defendant at trial violates the Eighth and Fourteenth Amendments. Imposition of punishment prior to conviction (whether in the form of physical incarceration without necessity therefor, in the form of excessive bail, or in any other form) violates any reasonable conception of due process of law under the Fifth and Fourteenth Amendments. Such flagrant violation of fundamental constitutional rights places a serious taint upon any further proceedings in the state court which has perpetrated them, if it does not invalidate these proceedings entirely. The state court had no reason whatever to think that any of these defendants would fail to appear for trial. The few facts presented pointed to exactly the opposite conclusion. The prosecution gave no reason for the court to think that any of these defendants would not appear for trial, and it offered no evidence. The only reason given by the district attorney's office for the imposition of any bail in these cases was that bail was necessary to induce these defendants to cease their demonstration activities against Niagara Mohawk. The mere filing of a criminal charge does not create a presumption that the accused is likely to flee the jurisdiction; some showing that such an occurrence is limly must be made to justify the imposition of any bail. No such showing was made against any of these defendants. It is preposterous for a court to assume that a college professor, for example, with a wife and family and professional roots in the community is likely to flee the state merely because he is charged with one of the most minor offenses known to the criminal law. Yet that is precisely what happened here. There is at the very least probable cause to believe that other acts based upon bias against these defendants will take place at a trial conducted by the same judges who have already demonstrated an unfortunate lack of neutrality and judicial restraint toward the petitioners herein and an altogether lamentable disregard for their fundamental constitutional rights. The federal judicial system was established to protect citizens of this country from the possibility of unfair treatment in state courts, which in some instances are susceptible of various forms of local political influence. Congress knew that such protection would occasionally be necessary to protect fundamental rights. In 28 U.S.C.A. §1443, Congress has authorized this Court to assume removal jurisdiction over "any" criminal proceeding in which "any person is denied . . . [in a state court] a right under any law providing for the equal civil rights of citizens." (Emphasis supplied.) We submit that the Constitution is "any law" within the meaning of that provision. We submit that the federal civil rights statutes (42 U.S.C.A. §§1983, 1985, 1986. See also 28 U.S.C.A. §1343) are "any law" within the meaning of that provision and that those civil rights statutes have been violated by the Syracuse police, the office of the District Attorney of Onondaga County, the courts of New York State, and Niagara Mohawk acting consciously in concert to punish these petitioners unjustly prior to trial and thereby to treat them differently from other persons charged with minor offenses in violation of their right to equal and fair protection of federal and state laws.

8. The prosecuting authorities have admitted in open court their purpose to use unreasonably high bail to intimidate petitioners and others. The state court accepted their motions for such bail knowing it to be excessive and unnecessary to insure the presence of the various defendants at trial and without any evidence being presented to support those motions. Obviously Niagara Mohawk is behind this course of action, and it is using its influence over the local district attorney to bludgeon petitioners and others of CORE into capitulating in the private dispute between the utility and the civil rights organization. The petitioners may have committed some minor offenses, and they may not. But this guilt or innocence is utterly unrelated to their right to reasonable bail (or none where it is unnecessary), to due process of law, and to be treated equally with other persons charged with the same offenses who are not connected with civil rights activity. Congress established this Court and maintains it for the purpose of insuring full protection of the rights of all who come within its jurisdiction. To fall within the removal jurisdiction of 28 U.S.C.A.

§ 1443 petitioners need only demonstrate that they either are (have been) deprived of their federal civil rights or "cannot" (will be unable in the future to) enforce such rights. Since it is virtually impossible to prove conclusively that one will be unable to enforce one's fundamental constitutional rights in the future, all that can reasonably be expected in the way of proof in a case such as this under § 1443 is evidence that civil rights have been violated in the state courts and that there is no reason to believe that the state courts and prosecutors who committed the earlier violations have had a change of heart. Such a showing has definitely been made herein. The excessive and arbitrary bails imposed upon these defendants are still in existence. Their constitutional rights are therefore being continually violated at the present time. To expect any stronger showing than has been made herein, to set a test so stringent as not to have been met in this case, would be for this Court to demand the impossible. Section 1443 does not establish impossible standards. Its requirements have been met in this case. Petitioners are praying for the protection of this Court to safeguard their procedural rights under the Constitution; they have properly invoked its jurisdiction; this Court should take their case.

9. Copies of all process, pleadings, and orders served upon petitioners are filed herewith and attached hereto.

WHEREFORE, petitioners pray that these actions be removed.

Dated: June , 1965

Faith A. Seidenberg

Sworn to before me this

day of June, 1965.

INSTALLMENT DEPT. INC., as ASSIGNEE of DIANE MARTIN VS. BUTLER, MARVA et al. NEW YORK 1969 Box 37
Folder 25

torical Society Of Wisconsin

Please Retain Original Order

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

| | | |
|---|---|---|
| INSTALLMENT DEPARTMENT INC. as assignee of DIANE MARTIN | : | |
| Plaintiff, | : | **STIPULATION OF SETTLEMENT** |
| -against- | : | |
| THEODORE BUTLER AND MARVA BUTLER | : | |
| Defendants. | : | |

IT IS STIPULATED AND AGREED by and between the attorney for the plaintiff and the defendants in person that the within action be settled upon the following terms and conditions:

1. That simultaneously herewith the defendants acknowledge and admit service upon them of a summons and admit that the indebtedness sued upon therein is justly due and owing and that they have no set-offs, defenses or counterclaims. Defendants represent that they are not serving in the Military Forces of the United States Government and are not persons subject to be called up for such service.

2. The defendants shall pay to the plaintiff the sum of $228.78 in the following manner: $7.50 to be paid every other week commencing January 15, 1969 until the full amount has been paid.

3. All payments shall be made to Collection Control Service, Inc., 15 Park Row, New York City, as collection agents for the plaintiff. All payments made hereunder shall be deemed payments made to Diane Martin.

4. In the event the defendants default in making payment as provided for herein, such default continuing for a period of five (5) days after written notice, then the plaintiff

may file the summons and complaint nunc pro tunc and enter judgment for the amount demanded therein, together with interest, costs and disbursements, credit, however, to be given to the defendants for any payments theretofore made by them upon the issuance of an execution.

5. Upon payment of the full amount provided for herein, the plaintiff will cause a paid up receipt to be issued to the defendants.

Dated: New York, N.Y. January 17, 1969

Attorney for Plaintiff

Marva E. Butler
Defendant in Person

Defendant in Person

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

On the 17th day of January 1969, before me personally came ~~THEODORE BUTLER~~ AND MARVA BUTLER to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that ~~they~~ she executed the same.

Richard M. Klein

RICHARD M. KLEIN
Notary Public, State of New York
No. 31-7296425
Qualified in New York County
Commission Expires March 30, 1970

**RICHARD J. PEPPERBLOOM**
**COUNSELOR AT LAW**

15 PARK ROW, NEW YORK, N. Y. 10038
TELEPHONE: WO 2-4033

January 14, 1969

James Spitzer, Esq.
164 Madison Ave.
New York, N.Y.

re: Installment Department as assignee
of Diane Martin
vs: Theodore Butler et ano

Dear Mr. Spitzer:

Pursuant to agreement entered into, enclosed please find Stipulation of Settlement and summons in the within matter.

Will you kindly have your clients sign the within stipulation, acknowledge their signatures and return the original and one copy to this office together with first payment.

The other copies you may retain in your file.

Thank you for your kind attention herein.

Very truly yours,

Richard J Pepperbloom

RICHARD J. PEPPERBLOOM

RJP:sw
Encl.

### SERVICE BY DELIVERY TO INDIVIDUAL DEFENDANT

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within summons and complaint on

defendant therein named, by delivering a true copy thereof to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

Sworn to before me this

day of

### SERVICE BY DELIVERY TO CORPORATE DEFENDANT

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within summons and complaint on

a corporation, a defendant therein named, by delivering a true copy thereof to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be thereof.

Sworn to before me this

day of

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*Index No.*

**Civil Court of the City of New York**
**County of** NEW YORK

**INSTALLMENT DEPARTMENT INC. as assignee of DIANE MARTIN** *Plaintiff*

*against*

**THEODORE BUTLER AND MARVA BUTLER**

*Defendants*

# Summons

## INDORSED COMPLAINT

*A statement of the nature and substance of the plaintiff's cause of action is as follows:*

Action to recover sum of $228.78 due for goods sold and delivered by plaintiff's assignor to defendants at they special ins stance and request. Payment of which has been duly demanded of defendants and refused.

RICHARD J. PEPPERBLOOM
*Attorney(~~s~~) for Plaintiff*
*Post Office Address*
15 Park Row
New York, N.Y.
Worth 2 5217

Summons, indorsed complaint

# 34

CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK

**INSTALLMENT DEPARTMENT INC. as assignee of DIANE MARTIN**

*Plaintiff*

*against*

**THEOBORE BUTLER AND MARVA BUTLER**

*Defendant* s

*Index No.*

**Summons**

*Plaintiff's Residence Address:*
97-45 Queens Blvd.
Rego Park, N.Y.

*The basis of the venue designated is:*
plaintiff's residence

*To the above named defendant* s

***You are hereby summoned*** *to appear in the Civil Court of the City of New York, County of* New York *at the office of the Clerk of the said Court at* 111 Centre Street *in the County of* New York *City and State of New York, within ten days after service of this summons upon you, exclusive of the day of service, and to make answer to the complaint; upon your failure to answer, judgment will be taken against you for the sum of $* 228.78 *with interest thereon from the* 12th *day of* April 1966 *together with the costs of this action.*

*Dated, the* 14th *day of* January 1969

*Defendant's Address:*
1101 Prospect Ave.
Bronx, N.Y.

RICHARD J. PEPPERBLOOM
*Attorney for Plaintiff*
*Post Office Address and Telephone Number*
15 Park Row
New York, N.Y.
Worth 2 5217

NOTE: If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, *or by any means other than personal delivery to you within the City of New York*, you are allowed THIRTY days *after the proof of service thereof is filed with the Clerk of this Court* within which to appear and answer.

SEDFRE

INVESTIGATION INTO DEATH OF NELSON ERBY; CORE AS AMICUS CURIAE, 1965

Box 3
Folder

of Wisconsin

Please Retain Original Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- - - - - - - - - - - - - - - - - - - - - -x

INVESTIGATION :

INTO :

THE DEATH OF :

NELSON ERBY :

- - - - - - - - - - - - - - - - - - - - - -x

**NOTICE OF MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE**

Case No. 2245/1965

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of George Schiffer, sworn to the sixteenth day of August, 1965, and upon all proceedings heretofore had herein the undersigned will move this court at a motion term thereof to be held at the Courthouse of The Supreme Court, County of Kings, located at the Supreme Court Building, Brooklyn, New York, on the twentieth day of August, 1965, at ten o'clock A.M., or as soon thereafter as counsel can be heard, for an order granting the Congress of Racial Equality, leave to appear as amicus curiae to assist the above court in the decision as to whether to accept the report of the Grand Jury in the above-entitled matter, pursuant to Section 253-a of the Code of Criminal Procedure, and for such other and further relief as to the court may seem just and proper in the premises.

Dated: New York, N. Y.
August 16, 1965.

Yours, etc.

George Schiffer
Attorney for Movants
40 East 49th Street
New York, N. Y. 10017

TO: Aaron E. Koota, Esq.
District Attorney,
Kings County
400 Municipal Building
Brooklyn, N.Y. 11201

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- - - - - - - - - - - - - - - - - - - - -x

| | | |
|---|---|---|
| INVESTIGATION | : | **AFFIDAVIT IN SUPPORT OF MOTION** |
| INTO | : | |
| THE DEATH OF | : | Case No. 2245/1965 |
| NELSON ERBY | : | |

- - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

GEORGE SCHIFFER, being duly sworn, deposes and says:

1. I am Assistant General Counsel of the Congress of Racial Equality (hereinafter referred to as "CORE"). I am familiar with the facts and circumstances herein set forth. I submit this affidavit in support of the application of CORE for leave to appear as *amicus curiae* in the above-entitled matter.

2. CORE seeks leave to appear as *amicus curiae* to assist the Court in its decision as to whether or not to accept the Report of the Grand Jury in the above-entitled matter pursuant to §253-a of the Code of Criminal Procedure. The questions of law involved are whether this Report is based upon facts revealed in the course of the investigation and whether the Report is supported by the preponderance of the credible and legally admissible evidence.

3. More particularly, CORE believes that the Grand Jury's Report contains material errors of fact and law. The most fundamental of these errors are, first, the misconstruction of the law of disorderly conduct; and second, misinterpretation of the medical evidence.

4. The Grand Jury's conclusions rest on the finding that Erby committed the offense of disorderly conduct. This finding was crucial to determining whether the patrolman acted lawfully or not. Yet the face of the Report shows that the Grand Jury's findings are not supported by evidence of disorderly conduct and that the Grand Jury entirely misapplied the law governing that offense. Above all, the Report lacks any finding that Erby committed a breach of the peace or that his conduct tended to a breach of the peace. The lack of a finding of breach of peace meant that the Grand Jury was bound, as a matter of law, to conclude that Erby had not committed disorderly conduct and that the attempted arrest was wrongful.

5. As to the medical evidence, the Grand Jury laid great emphasis on the question, whether the fatal shots were fired while Erby was down. The Grand Jury was apparently confused on the point, concluding that Erby was not prone when these shots were fired. The plain evidence is that at least one fatal shot was fired while Erby was supine: he was not face down, he lay face up. This fact goes directly to the question whether the patrolman used excessive force, regardless of the validity of

the attempted arrest. A copy of the autopsy report of Dr. David Spain, Chief of Pathology, Brookdale Hospital Center, former Chief Medical Examiner, Westchester County, marked Exhibit "A", is annexed hereto and made a part hereof.

6. Specifically, the points which CORE wishes to present in this case are as follows:

I. Since on the face of the Report Erby did not commit disorderly conduct, the Grand Jury's finding that Liebowitz was justified, is unsupported.

II. The arrest for disorderly conduct, being unlawful, Nelson Erby had a right to resist with reasonable force.

III. Even if Erby had been guilty of disorderly conduct, Liebowitz was not justified in the killing.

IV. The Grand Jury's Report is not supported by a preponderance of the credible and legally admissible evidence and should, therefore, be rejected by the Court.

7. CORE seeks leave to appear as amicus curiae in this matter because of the interest of the community, in the decision of the above Court as to whether to accept the Report of the Grand Jury in the above-mentioned matter. The questions of law before the Court are significant

questions concerning the relationship between the police and the general community. CORE, a national civil rights organization, has seventeen chapters in the Metropolitan Area.

WHEREFORE, your deponent respectfully requests that the instant application be granted in all respects and the Congress of Racial Equality be given leave to appear as amicus curiae in this matter.

Schiffer

Sworn to before me this

17th day of August, 1965.

Barry Lee Cohen
Barry Lee Cohen
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1966

(EXHIBIT "A")

E BROOKDALE HOSPITAL CENTER
LINDEN BLVD. & ROCKAWAY PARKWAY, BROOKLYN 12, N. Y. HY. 5-6800

DEPARTMENT OF PATHOLOGY
DAVID M. SPAIN, M. D.
DIRECTOR

To Mr. George Schiffer:

Noses on the re-examination of the deceased, Nelson Erby, performed at The Manhattan Medical Examiner's Office by Dr. Milton Helpern at approximately 5:30 P. M. on July 21, 1965 and witnessed by Dr. David M. Spain.

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Re-examination of the head, scalp and cranium revealed no objective evidence of any injuries. There were no fractures, no blood in the tissues and no other changes. Skin was unaltered. The autopsy incision accounted adequately for what had been questioned by someas a possible injury.

There were bullet wounds as follows:

1. There was an entrance bullet wound in the abdominal wall in the right lower quadrant. The bullet tract from this entrance wound extended through the intestine, stomach, diaphragm and lung and was found lodged in the left chest in the region of the 6th rib. The trajectory of this wound indicates that the bullet traveled in an upward direction.

2. There was an entrance bullet wound in the rear of the right upper thigh and an exit wound directly opposite this in front of the thigh.

3. There was an entrance bullet wound just beneath the right shoulder. This traveled in a slightly downwards and inwards direction and entered the chest and penetrated the right lung and was found there.

4. There was an entrance bullet wound in the palm of the left hand. The entrance wound was charred and stellate (indicating close contact). There was an exit wound just opposite to this on the other side of the hand. Over the right lower chest there was a slap type of wound underneath which there was hemorrhage in the tissues. This was the result of a bullet slapping the skin but not penetrating it. This may have come from a separate bullet or may have possibly been the result of a bullet that exited from the left hand. There were holes in the clothing to correspond to the various bullet wounds, including the slap wound. None of these contained powder granules.

Blood was found in the abdominal cavity and in both sides of the chest. This hemorrhage was probably the responsible factor for his death.

Evidence of needle marks and scars were found in the forearm and in the right forearm there was evidence of recent injections. I was informed that the blood alcohol determination was 0.104. There were no reports yet on the narcotic determination in his blood. There was no evidence of any other injuries to this body.

The medical examiner's office was completely cooperative and to the best of my knowledge performed a complete and objective examination.

July 22, 1965

David M. Spain, M.D.
Director of Pathology

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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INVESTIGATION

INTO

THE DEATH OF

NELSON ERBY

CASE # 2245/1965

- - - - - - - - - - - - - - - - - - - - - - - - -x

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# BRIEF OF AMICUS CURIAE

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GEORGE SCHIFFER, ESQ.
Asst. General Counsel,
Congress of Racial Equality
Office and P.O. Address
40 E. 49th Street
New York, N. Y. 10017

Carl Rachlin
Stephen M. Nagler

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## Statement of the Case

The Kings County Grand Jury, at the request of the District Attorney of Kings County, commenced an "Investigation Into the Death of Nelson Erby" on July 19, 1965. The investigation lasted for five days. On the 27th of July, 1965, the Grand Jury made a statement to the effect that Patrolman Sheldon Liebowitz was not criminally culpable for having shot Nelson Erby on the grounds that Liebowitz apprehended a design by Erby to do him great personal injury, and that there was imminent danger of such design being accomplished. The Grand Jury also stated that pursuant to a request by Patrolman Liebowitz, a report would follow. Such reports are authorized by §253-a of the Code of Criminal Procedure. The report was handed up on Thursday, August 12th, 1965. Such reports may be "accepted" by the Court pursuant to §253-a(2), if the Court finds _inter alia_ from an examination of the record that:

> "(a) The report is based upon facts revealed in the course of an investigation . . . and is supported by the preponderance

> of the credible and legally admissable evidence;" §253-a(2), Code of Criminal Procedure.

If the court finds that the report is not based on a "preponderance of the credible and legally admissable evidence" it may:

> ". . . direct that additional testimony be taken before the same Grand Jury, or it shall make an order sealing such report and it shall not be filed as a public record, subject to subpoena or otherwise made public." §253-a(5), Code of Criminal Procedure.

CORE moves for leave to appear in this case as *amicus curiae* for the purpose of showing that the report of the Kings County Grand Jury should not be accepted and that pursuant to §253-a(5) of the Code of Criminal Procedure, the matter be re-submitted to the Grand Jury, or, alternately, that the report be sealed and not filed as a public record.

## STATEMENT OF FACTS

At or about 10:45 A.M., July 15, 1965, the deceased, Nelson Erby, was on the sidewalk at or near the intersection of Fulton Street and Nostrand Avenue, a very busy corner in the heart of the Bedford-Stuyvesant district of Brooklyn.

Although subsequent testimony conflicted as to what exactly Mr. Erby was doing ("shadow boxing", "praying", "crawling", "mumbling", "yelling"), it is clear that he was acting in an "unusual manner" (R.3). No sizable crowd gathered, albeit some passers-by stopped to observe Erby. There was no disorder or breach of the peace, or even a threat of breach of the peace, as subsequent events proved. There was no evidence that Erby's conduct disturbed, offended or annoyed anyone or that any person complained.

Patrolman Sheldon Liebowitz observed Mr. Erby's activities for some time. He sought to have Mr. Erby desist. Mr. Erby refused to depart. The patrolan's failure to attempt to arrest Mr. Erby immediately militated against any inference of breach of peace.

When Patrolman Liebowitz sought to arrest Mr. Erby for the offense of disorderly conduct, Mr. Erby resisted, first trying to keep his right hand from being handcuffed and then, when the officer drew his gun, with force. There was contradictory testimony as to whether Mr. Erby did or did not have a knife, the grand jury being unable to reach a conclusion. (R.7)

A struggle thereupon ensued between Mr. Erby and Patrolman Liebowitz in the course of which Patrolman Liebowitz sustained a gun shot to his left forearm inflicted by a bullet from his own revolver (R.4). Although there is conflicting testimony as to who had possession of Patrolman Liebowitz's revolver when this shot was fired (R.6), the grand jury apparently concluded that the police officer shot himself. Mr. Erby sustained a charred wound through his left palm, which may have been sustained at this time.

At some point during this struggle, three persons, unknown to each other and to either of the combatants, recognizing the police officer's plight in the face of Nelson Erby's superior strength, voluntarily came to the aid of the patrolman (R.4). These persons were not members of the crowd, if any. One of the three had a wooden club. Testimony indicates that no one intervened on Erby's behalf or even attempted to intervene, and no one else was arrested either for disorderly conduct, interfering with an arrest or any other presumed crime. Thus, if there was a crowd, it was orderly. No bystander was arrested.

At some time subsequent to the arrival of his three assistants, Patrolman Liebowitz fired four shots at Nelson Erby. Two of these shots were fatal. The grand jury stated that conflicting testimony made it impossible to find conclusively what the relative positions of Nelson Erby and Patrolman Liebowitz were when these shots were fired (R.5). However, uncontradicted medical testimony showed that one of the bullets entered Erby's abdomen and traveled upward through several organs into the lung, indicating that either Erby or Liebowitz was standing, while the other was prone. No witness suggested that Erby was at any time standing over Liebowitz. The only other possibility supported by witnesses as well as medical evidence, was that the Patrolman was upright while Erby was prone.

Another wound, penetrating Erby's left thigh from rear to front, similarly was found not to sustain the allegations that Nelson Erby was shot from behind (R.6), although there is no other way in which such a wound could have been inflicted, and several witnesses said that Erby was shot again as he got up from the ground and staggered away with Patrolman Liebowitz pursuing and firing at him.

Despite the fact that Patrolman Liebowitz had three asistants, at least one of whom was armed with a club, and that Nelson Erby was unarmed and lying on, or attempting to rise from, the ground at the time he was fatally shot, the grand jury concluded that Patrolman Liebowitz "could and did reasonably perceive that his only recourse to prevent grievous bodily injury to himself was to shoot his assailant" (R.8-9). This conclusion was reached despite the fact that Erby sustained his last wound from behind, when he was plainly retreating.

The facts disclosed by the grand jury's report and CORE's investigation (including the medical report of Dr. David Spain, Chief of Pathology at The Brookdale Hospital Center and former Chief Medical Examiner of Westchester County) suggest the following sequence:

The action occurred in a space about 15 feet square.

Mr. Erby sustained the hand wound in the initial struggle. The bystander with the club then succeeded in knocking Mr. Erby to the street. Patrolman Liebowitz retrieved his gun from another bystander, turned, and without hesitation or warning, began to shoot at Mr. Erby. The first fatal wound entered the lower abdomen and travelled upward as Erby lay prone. The second fatal wound struck the shoulder and deflected into the lung. A third shot caused a slap wound on Mr. Erby's chest as he was rising. A fourth shot struck Mr. Erby's leg from behind as he was trying to escape.

The facts therefore contradict the grand jury's Report in two crucial respect: first, the elements of the offense of disorderly conduct were lacking with the consequence that Patrolman Liebowitz was not attempting to make a lawful arrest; second, Patrolman Liebowitz was not acting in self defense or using a reasonable amount of force.

## POINT I

### SINCE ON THE FACE OF THE REPORT ERBY DID NOT COMMIT DISORDERLY CONDUCT, THE GRAND JURY'S FINDING THAT LIEBOWITZ WAS JUSTIFIED IS UNSUPPORTED.

The grand jury's chain of reasoning was simple: (1) Erby committed disorderly conduct; (2) Liebowitz sought to make an arrest; (3) Erby resisted, using force in violation of penal law §242(5); (4) Liebowitz had reason to fear injury from this felonious act; (5) Liebowitz did not use excessive force: therefore, Liebowitz was justified. It was not for the grand jury to ponder the implications of escalating "unusual conduct", punishable normally by a small fine, to death.

If Erby did not commit disorderly conduct, then the following chain of reasoning becomes mandatory: (1) Erby's conduct was "unusual" but not criminal; (2) Liebowitz, in seeking to arrest Erby, assaulted him; (3) Erby, as was his right, resisted the unlawful arrest; (4) Liebowitz committed a further assault by shooting Erby, even when Erby was clearly retreating.

Demonstrably, on the face of the Report, the grand jury could not find a disorderly conduct because there was no breach of the peace. In a constant and consistent chain of cases, the New York Court of Appeals and the United States Supreme Court have struck down convictions for disorderly conduct on the ground that the defendant, had committed no punishable act in the absence of a breach of the peace. In People v. Nixon, 248 N.Y. 182 (1928), the New York Court of Appeals said:

> ". . . As yet, bad manners have not been made punishable by imprisonment . . . There is nothing to show that any other person could have regarded the defendants' conduct as a threat or as calculated to coerce or impede anyone. In the absence of evidence, we may not infer that the conduct of the defendants was intended as a threat or could be construed, or was an incentive to violence by others."

As stated in the opening paragraph of Section 722 of the Penal Law, a "breach of the peace" must be occasioned before one may be arrested for disorderly conduct. This has consistently been defined as a:

> ". . . disturbance of public order by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community." Cantwell v. Connecticut, 310 U.S. 296,308; People v. Most, 171 N.Y. 423, 420, People v. Carcel, 3 N.Y. 2d. 327 (1957); People v. Harvey, 307 N.Y. 588 (1954); People v. Nixon, Supra.

In fact, if the New York statute did not impose such "breach of the peace" limitations, it would long ago have been struck down as providing no reasonable standard of punishable conduct, and also because conduct not constituting a "breach of peace" is protected by the First Amendment to the Constitution of the United States. Cantwell v. Connecticut, supra; Edwards v. South Carolina, 372 U.S. 229 (1963); Fields v. South Carolina, 375 U.S. 44 (1964); Cox v. Louisiana, 85 S.Ct. 453 (1965).

In its report, the Grand Jury stated that Nelson Erby:

> ". . . was acting in a manner which aroused the attention of passersby." Investigation Into the Death of Nelson Erby, Case No. 2245/1965 (Sup. Ct., County of Kings ), P. 3.

From this, the Grand Jury concluded that:

> "It is evident Mr. Erby was acting in a manner which was patently disorderly, that his conduct was such as to annoy, disturb or be offensive to others; and that by his actions, he caused a crowd to collect; all of which did constitute the offense of Disorderly Conduct." Investigation Into the Death of Nelson Erby, Supra at P. 3.

It will thus be noted that no breach of peace or known threat of breach of peace was found. "Arousing the attention of passersby" is not a crime in New York.

Nor, when the grand jury repeated the words of the statute, was there reference to a scintilla of evidence that any person was in fact annoyed, disturbed or offended.

Nor is it criminal to cause a crowd to collect. The Report does not even state how many persons were present, if indeed there was a crowd. In equating "arousing the attention of passersby" with disorderly conduct, the grand jury applied a standard which is not the law of New York and which, constitutionally cannot be that law.

New York is full of people who pray on the street, people who act strangely, oddly, whose conduct is "unusual". To make each of us who acts unusually liable to arrest would be to invert our legal system.

That in fact there was no breach of the peace, or for that matter, any threat whatsoever, inherent in Erby's conduct is fully supported by the finding of the grand jury that Patrolman Liebowitz observed Mr. Erby's actions for "some period of time". Investigation Into the Death of Nelson Erby, supra, at P. 3.

## POINT II

### THE ARREST FOR DISORDERLY CONDUCT BEING UNLAWFUL, NELSON ERBY HAD A RIGHT TO RESIST IT WITH REASONABLE FORCE.

In People v. Cherry, 307 N.Y. 308, 121 NE2d 238 (1954), The Court of Appeals said:

> "Defendant's prior acquittal of the crime for which he was arrested consequently established the arrest to have been unlawful, and he was, therefore, entitled to resist such an arrest with reasonable force." People v. Dreares, 221 NYS 2d 819 (1st Dept., 1961), aff'd, 11 NY 2d 906, People v. Galamison, 42 Misc. 2d 387, 248 NYS 2d 358 (1963).

Since the attempted arrest of Nelson Erby for disorderly conduct was unlawful, Erby had a right to resist with reasonable force. Therefore, the grand jury was patently incorrect in stating the conclusion that:

> ". . ./I/n the course of such resistence and in an attempt to prevent or resist his lawful apprehension and detention, Nelson Erby did wrongfully, unlawfully and violently assault Patrolman Liebowitz." Investigation, etc., supra at P. 3.

The grand jury makes a point of the violence of the struggle. The breaking of handcuffs during the struggle (*Invesigation*, *etc*.,*supra*., at pages 3, 4) and the infliction of a gun shot wound in the policeman's arm from his own revolver are instances. But that very violence was Erby's rightful defense of himself. Indeed the evidence supports the conclusion that the gun was being used by Patrolman Liebowitz for the purpose of effecting an unlawful arrest, and not in the control of Nelson Erby at the time the officer received his bullet wound. *Investigation* *etc*., *supra*,at page 6. In fact, the threatened use of a deadly weapon by Patrolman Liebowitz at an early stage of the struggle in an effort to effect an unlawful arrest, raises questions as to whether he and not Erby was guilty of felonious assault. Certainly the threatened use of such a weapon would have justified the use of considerable force by Erby in self defense. Nor does the presence or absence of a knife (which most witnesses did not see), *Investigation*, *supra*, at page 7. affect the determination of the grand jury. *Investigation* etc ., *supra*, at page 8.

The grand jury, in support of its conclusion that Nelson Erby was guilty of assault in the second degree upon Patrolman Liebowitz, urged the fact that three people came to the aid of the officer during the course of the struggle. Yet this fact equally argues the intensity of Liebowitz's assault on Erby. How, with so much assistance, Liebowitz could reasonably have believed that he was in imminent danger of grievous bodily harm at the time he fired the fatal bullets is incomprehensible.

## POINT III

### EVEN IF ERBY HAD BEEN GUILTY OF DISORDERLY CONDUCT, LIEBOWITZ WAS NOT JUSTIFIED IN THE KILLING.

If Erby was guilty of disorderly conduct, and if consequently, he assaulted the patrolman, the intervention of the three bystanders terminated the assault and all grounds for the firing of the deadly shots.

At one point in the melee, the combatants were separated. Erby had been clubbed to the ground. Liebowitz had lost his gun but was standing. Liebowitz then recovered the gun, and, without hesitation, shot.

The grand jury suggested that Liebowitz had the right to shoot to prevent the escape of a person who had committed a felony. The only felony possible was the assault on Liebowitz himself, which had terminated.

The statute, §1055(3), P.L. cannot apply to such a situation since it invites a policeman to kill for offenses of a minor character.

Yet, Liebowitz's shooting without hesitation removes entirely the question of §1055(3). Erby, lying down when the shooting started, could not be deemed to be escaping when the fatal wounds were made.*

---

* §1055(3) would apply, if at all, to the irrelevant leg wound incurred as Erby sought shelter after the fatal bullets.

The medical evidence was plainly misinterpreted by the grand jury in this crucial context.

At Page 6 of the grand jury's report, the following statement is made:

> "From the competent and credible evidence before us, supported further by the medical testimony, we conclude that the fatal bullets did not strike Nelson Erby in the back, and that Nelson Erby was not lying prone on the sidewalk with the police officer firing down into his body."

In point of fact, Erby was on his back when one of the fatal bullets struck him. He was not prone but supine when the officer shot.

Witnesses stated that at the time Nelson Erby was shot he was seated on the ground with his legs outstretched in front of him. His back was arched and he rested on an elbow. He squirmed from side to side, as he lay in this position.

This testimony is fully supported by the uncontradicted medical evidence presented to the grand jury. One of the fatal bullets entered Erby's body at the lower right side of his abdomen and coursed upward, to lodge in the area of Erby's sixth rib. /See also Exhibit "A":

Notes of Dr. David Spain, attached/. The low angle of the wound suggests it was the result of the first bullet fired as Erby lay in one quadrant of the 15 foot square and Liebowitz retrieved his gun opposite.

Given, then, the facts that Erby was supine when shot and that Liebowitz fired without hesitation, the conclusion of the grand jury that Liebowitz shot in self defense is untenable. Furthermore, the grand jury found that Liebowitz was at this time being assisted by three men, at least one of whom was armed with a club.

It is apparent, therefore, that at the time the fatal shots were fired, Patrolman Liebowitz did not in fact:

> "apprehend a design on the part of the person slain ... to do some great personal injury, to the slayer /himself/ or to any ... person."
>
> Penal Law, Section 1055.

Thus, the circumstances of the killing, after termination of the assault, remove the case entirely from §1055. The circumstances bear out neither self defense nor prevention of escape, two inconsistent motives. The uncertainty of the grand jury is shown by their testing the report on both theories. This inconsistency in itself requires rejection of the report.

## POINT IV

### THE GRAND JURY'S REPORT IS NOT SUPPORTED BY A PREPONDERANCE OF THE CREDIBLE AND LEGALLY ADMISSIBLE EVIDENCE AND SHOULD, THEREFORE, BE REJECTED BY THE COURT.

As indicated above (Point I) there was no legal basis for arresting Nelson Erby for Disorderly Conduct and, therefore, Erby was entitled to use ncessary, reasonable force in preventing the arrest (Point II). Particularly in view of the fact that Patrolman Liebowitz was using a deadly weapon in effecting the unlawful arrest, a considerable amount of force could reasonably have been used by Erby without constituting either a violation of Section 1825 or of Section 242 (5) of the Penal Law. This removes any color of right from the shooting of Nelson Erby.

The conclusion that Liebowitz fired for the purpose of preventing "great personal injury" and was in "immiment danger" were also against the "preponderance of the credible and legally admissible evidence" (Point III).

Section 253-a (2) of the Code of Criminal Procedure provides that:

> "The Court to which such report is submitted shall examine it and the minutes of the grand jury and, . . . shall make an order accepting and filing such report as a public record only if the court is satisfied . . . that:
>
> (a) the report is based upon facts revealed in the course of an investigation . . . and is supported by the preponderance of the credible and legally admissible evidence."

That the report of the grand jury was against the weight of the "credible and legally admissible evidence" and that its conclusions were based on a totally incorrect statement of the law have been indicated above. This being the case, the court should refuse to accept the report and should refer the matter back to the grand jury for new findings or, alternately, order that the report be sealed and not made a public record. Section 253-a (5), Code of Criminal Procedure.

Indeed, it is urged that sufficient evidence was presented which the grand jury accepted as credible to warrant the conviction of Patrolman Liebowitz by a

Petit Jury. The fact that the Grand Jury, conducted a trial in camera, and precluded a public determination of the guilt or innocence of Patrolman Liebowitz was in violation of its function under the laws of the State of New York. Section 251, Penal Law; People v. Molineux, 14 N.Y. Cr. R. 136 (1899); People v. Leary, 305 N.Y. 793, 113 NE 2d. 303 (1953).

## CONCLUSION

WHEREFORE, it is respectfully submitted that the report of the Kings County Grand Jury on its "Investigation Into The Death Of Nelson Erby," Case #2245/1965 should not be accepted by the Court and that the matter should be re-submitted to the Grand Jury, or alternately that the report should be sealed but not filed as a public document.

Respectfully submitted,

George Schiffer

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ATTN: Alan Gartner

**FOR IMMEDIATE RELEASE**

# CORE CHALLENGES GRAND JURY FINDING

New York, N.Y., August 30, 1965 -- The finding of the Grand Jury investigation into the death of Nelson Erby, shot by Patrolman Sheldon Liebowitz, was challenged by CORE in an amicus curiae brief filed before the state Supreme Court, (Kings County . CORE counsel George Schiffer contended that since Erby did not commit disorderly conduct, Patrolman Liebowitz's actions were unjustified. Further, that as the arrest for disorderly conduct was unlawful, Erby had by law a right to resist it with reasonable force, and that even if Erby had been guilty of disorderly conduct, Liebowitz was not justified in the killing.

Because of its belief that the Grand Jury's report was not supported by the weight of the evidence, CORE has urged the court not to accept the report. CORE counsel Schiffer has requested that the Court either return the matter to the Grand Jury for further investigation, or have the report sealed and not be granted the dignity and status of a public record.

Rather than supporting the exoneration of Liebowitz, the CORE brief states that the evidence presented before the Grand Jury warranted an indictment of Liebowitz.

####

SEP 9 1965

SOLOMON AND LYNN
CERTIFIED PUBLIC ACCOUNTANTS
11 PARK PLACE
NEW YORK 7, N.Y.
BEEKMAN 3-6491

ALBERT J. SOLOMON, C.P.A.
IRVING R. LYNN, C.P.A.

September 8, 1965

Mr. George Schiffer
Assistant General Counsel
National Congress of Racial Equality
38 Park Row
New York City, N.Y. 10007

Dear Sir:

The plight of the Negro ( in the North as well as the South) has always been of great concern to me and I have fought discrimination and segregation with whatever means I have considered to be the proper ones.

As a Bronx County Grand Juror, however, I deeply resent your attitude as expressed in the CORE complaint filed with Supreme Court Justice Hyman Barshay. What gives you the right to explain the workings of the Grand Jury system? Your statement, quoted in the New York Times of Sunday, September 5, indicates your disturbance "because the police and District Attorney violate the law, etc., etc".

Have you ever served on a Grand Jury panel? Undoubtedly not, since you are an attorney. Yet you are expressing an opinion from unquestionably CORE-slanted sources- hearsay evidence to which you would object very loudly if it suited your purpose to do so.

I served as foreman of the May, 1965, panel and have sat for a number of years as a regular member of Bronx Grand Jury panels. Contrary to your unwarranted remarks, the members of the Grand Jury are not used as rubber stamps by the District Attorney and the police. We have always discussed each case amoung ourselves- with the District Attorney ( or Assistant) out of the room. The decision to vote a true bill or not is, and has always been, our own.

CORE is not only failing the Negro, it is actually losing, because of its methods, the support it once had of many liberals like me. In the Liebowitz case, to which your complaint refers specifically, you say that there should have been " a completely independent investigation by qualified civilians." Whether you think so or not, Mr. Schiffer, we Grand Jurors are " qualified civilians". Or do you think that only members of CORE should constitute the "qualified" group?

Patrolman Liebowitz a man of 24, was coping with an ex-convict who actually tried to kill the young patrolman. Luckily he succeeded in only wounding him. If one of the two was fated to meet death, which one, Mr. Schiffer, would you say it should have been?

Whether you like it or not, the Brooklyn Grand Jury heard all of the evidence in the case and did not vote an indictment. Now you, an attorney, are asking a Supreme Court Judge to reconsider a report rendered by a Grand Jury. Is it your hope that the Grand Jury system be abolished and all persons accused of crimes by either the police or CORE be immediately placed on trial?

Wrongdoers generally fear Grand Juries. Those who feel they have been unjustly accused have the right to ask to appear before the Grand Jury, sign a waiver of immunity and tell their story. Many arrested persons, of course, refuse to avail themselves of this opportunity to explain to the Grand Jurors why an indictment should not be voted in their cases- for obvious reasons. You would agree to abide by a Grand Jury decision- on behalf of a client- if there were a dismissal of the charges. On the other hand, were a true bill voted you would wish the right to disregard the decision and ask for a "recount".

It is difficult for me, a layman, to equate that kind of thinking with what I have always considered to be the orderly mental processes of a lawyer.

Yours very truly,

Albert J. Solomon

AJS:ba

Albert J. Solomon
530 West 236 Street
New York City, N.Y.

Erby

September 13, 1965

Mr. Albert J. Solomon
11 Park Place
New York 7, New York

Dear Sir:

I have taken the liberty of making a few comments in response to your letter addressed to Mr. Schiffer, dated September 8, 1965.

I am afraid that you have done precisely what you accuse Mr. Schiffer of having done:

a) You do not have the faintest idea of the examinations and investigations conducted by Mr. Schiffer and those associated with him.

b) You do not know how or what evidence was presented to the grand jury in Brooklyn. A grand jury, as you well know, does not try the evidence, but merely decides whether there is enough to bring in an indictment.

I do not know whether you have ever sat in on a case where members of the police department were accused of brutality to citizens, but if you have, think back and see whether these cases were handled in the same way as the normal case.

Please keep in mind that there are no attorneys present to cross-examine the accused person or witnesses testifying in his behalf. I am very much afraid that, in an effort to uphold an important institution in our legal system, you have not exercised the careful evaluation for which your profession is so justly honored.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

JACKSON, LEDELL, MAE & WILLIAMS, LEONARD VS. LOUISIANA 1964-1965

Box 37
Folder 27

of Wisconsin

Please Retain Original Order

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CRIM. NOS. 6453-A

STATE OF LOUISIANA

-v.-

LEDELL MAE JACKSON

* * * * * * * * * * * * * *

CRIM. NOS. 6454-A

STATE OF LOUISIANA

-v.-

LEONARD WILLIAMS

* * * * * * * * * * * * * * * * * * * * * * * *

## MOTION FOR CONTINUANCE

NOW COMES LEDELL MAE JACKSON, and LEONARD WILLIAMS in the above titled and numbered causes and respectfully move the court for a continuance in the trial of these causes for this:

I. a) On May 10, 1965, the Honorable E. Gordon West, Judge, United States District Court, Eastern District of Louisiana Baton Rouge Division, recinded a "stay" order that was issued in this cause which was remanded back to the 20th Judicial District Court of Louisiana from a federal petition for removal under 28 USC 1443 et seq.

b) On May 16, 1965, the attorney for the accused received a letter stating that this cause had been set down for trial for May 21, 1965 at 2:30 P.M. The attorney, Murphy Bell was then enroute to Atlanta, Ga. to argue another removal case before a panel of the United States Court of Appeal for the Fifth Circuit, then sitting in Atlanta, Georgia. This was Tyson v. Louisiana, No. 22571.

c) In the meanwhile in Plummer v. Louisiana, No. 1590 also a removal case remanded by Judge West back to the Family Court of East Baton Rouge, was set for trial on the manslaughter charge by Family Court Judge, C. Lenton Sartain. The trial began at 4:30P.M. Thursday May 20, 1965 and is scheduled to resume at 2:00 P.M. May 21, 1965.

II. Because of the heavy schedule of trials as shown in (a) (b) and (c) Movers are unable to proceed to trial at this time and will need a minimum of thirty (30) days to properly prepare to try cases of this complex nature and importance,

WHEREFORE, premises considered, IT IS ORDERED that the trial in these causes, State v. Jackson, No. 6453-A and State v. Williams, No. 6454-A be continued until the______day of ________, 1965 at________o'clock___P.M. in the Parish Courthouse at West Feliciana.

St. Francisville, Louisiana, May 21, 1965.

______________________________
JUDGE, 20th JUDICIAL DISTRICT COURT

## AFFIDAVIT

Murphy W. Bell, being of lawful age, upon his oath deposes:

That he is the trial attorney for Ledell Mae Jackson and Leonard Williams; that all of the allegations of fact in the above motion are true and correct.

That he has served a copy thereof this day upon the Clerk and District Attorney for the 20th Judicial District, Louisiana at the Courthouse, St. Francisville, La.

Baton Rouge, La. May 21, 1965.

______________________________
Murphy W. Bell

SWORN TO and SUBSCRIBED before me, this 21st day of May, 1965.

______________________________
NOTARY PUBLIC for East
Baton Rouge, Louisiana

IN THE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

CRIM. NOS._________

STATE OF LOUISIANA

-v.-

LEONARD WILLIAMS

* * * * * * * * * * * * * * * * *

CRIM. NOS._________

STATE OF LOUISIANA

-v.-

LEDELL MAE JACKSON

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## NOTICE OF APPEAL

The defendants named in the above-numbered removed criminal cases hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order of this Court, Honorable E. Gordon West, Judge, on May 24, 1965, remanding these causes to the Twentieth Judicial District Court in and for the Parish of West Feliciana, State of Louisiana.

COLLINS, DOUGLAS & ELIE
2211 Dryades St.
New Orleans, La.

By:____________________
MURPHY W. BELL
971 So. 13th St.
Baton Rouge, La.

May 26, 1965

IN THE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED MAY 26 1965
A. DALLAM O'BRIEN, JR.
CLERK

CRIM. NOS. N66

STATE OF LOUISIANA

-v.-

LEONARD WILLIAMS

* * * * * * * * * * * * * * *

CRIM. NOS. N67

STATE OF LOUISIANA

-v.-

LEDELL MAE JACKSON

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## APPLICATION FOR STAY

The defendants named in the above numbered removed criminal cases hereby apply to this Court for a "stay" pending appilate review of the herein ordered remand of these cases to the State Court.

Application for Stay Order is DENIED
May 28, 1965
E. Gordon West
U.S. District Judge

COLLINS, DOUGLAS & ELIE
2211 Dryades St.
New Orleans, La.

By: Murphy W. Bell
MURPHY W. BELL
971 So. 13th St.
Baton Rouge, La.

May 26, 1965

___ FEE
___ PROCESS
X CHARGE
✓ INDEX
___ ORDER
___ HEARING
DOCUMENT NO.___

# STATE OF LOUISIANA
## TWENTIETH JUDICIAL DISTRICT
## PARISH OF WEST FELICIANA

IN THE NAME and by the authority of the State of Louisiana, the GRAND JURORS duly selected, impanelled and sworn to inquire in and for the body of the Parish of West Feliciana, at a District Court, begun and held in and for said Parish and State on the First Monday in the month of May, in the year of Our Lord, One Thousand Nine Hundred and Sixty-four upon their oath present that one

**Leonard Williams**

late of the Parish of West Feliciana, within the body of the Parish of West Feliciana, on or about the 18th day of September, in the year of Our Lord, One Thousand Nine Hundred and Sixty-four, ~~did with force and arms~~

did violate R.S. 18: 222 in that while attempting to register to vote in West Feliciana Parish, Louisiana, he did knowingly present a document to the registrar of voters for the purpose of procuring himself to be registered as a voter in the Parish of West Feliciana, which document contained the following false staements, to-wit:

1) that he had never been a reigistered voter in any other Ward, Precinct or Parish in the State of Louisiana when in truth and in fact he had been a registered voter in the Parish of East Baton Rouge in the year 1955

2) that he had resided in the Parish of West Feliciana all his life when in truth and in fact he had registered to vote in the Parish of East Baton Rouge as a resident of said Parish in 1955

contrary to the form of the Statutes of the State of Louisiana, in such cases made and provided against the peace and dignity of the same.

**Assistant** District Attorney of the Twentieth Judicial District
of State of Louisiana
State of Louisiana

No. 6454-A

Twentieth Judical District Court
Parish of West Feliciana

State of Louisiana
Vs.
Leonard Williams

INDICTMENT

Violate R. S. 18:222

A True Bill

s/ Warren E. Wesley
Foreman

Filed November 2, 1964

s/Shirley B. Winston
Clerk 20th Judicial Court

Fred C. Jackson
Ass't. District Attorney

A TRUE COPY Nov. 20 1964
Anna W. Sauli
Dy Clerk of Court

# STATE OF LOUISIANA
## TWENTIETH JUDICIAL DISTRICT
## PARISH OF WEST FELICIANA

IN THE NAME and by the authority of the State of Louisiana, the GRAND JURORS duly selected, impanelled and sworn to inquire in and for the body of the Parish of **West** Feliciana, at a District Court, begun and held in and for said Parish and State on the First Monday in the month of **May**, in the year of Our Lord, One Thousand Nine Hundred and **sixty-four** upon their oath present that one

**Ledell Mae Jackson**

late of the Parish of **West** Feliciana, within the body of the Parish of **West** Feliciana, on or about the **24th** day of **September**, in the year of Our Lord, One Thousand Nine Hundred and **sixty-four**, ~~[illegible]~~ violated R. S. 18:222 by registering ~~registered~~ illegally to vote in the Parish of West Feliciana in that she presented an affidavit to the Registrar of Voters in and for the Parish of West Feliciana, for the purpose of produring herself to be registered as a voter in said Parish, which said affidavit contained a statement that the said Ledell Mae Jackson had never been convicted of a felony when in truth and in fact the said Ledell Mae Jackson had been convicted of two counts of forgery and sentenced to the Louisiana State Penitentiary on or about the 7th day of February, 1947 in cases number 255A and 255½A on the docket of the Twentieth Judicial District Court for the Parish of West Feliciana,

contrary to the form of the Statutes of the State of Louisiana, in such cases made and provided against the peace and dignity of the same.

**Assistant** District Attorney of the Twentieth Judicial District
of the State of Louisiana.

No. 6453-A

Twentieth Judical District Court

Parish of West Feliciana

State of Louisiana

Vs.

Ledell Mae Jackson

INDICTMENT

Violat R.S. 18:222

A True Bill

s/Warren E. Wesley
Foreman

Filed November 2, 1964

s/ Shirley B. Winston
Clerk 20th Judicial District Court

Fred G. Jackson
Ass't. District Attorney

A TRUE COPY Nov 20, 1964
Anna W. Smith
Dy Clerk of Court

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

June 2, 1965

Mr. Murphy W. Bell
Attorney at Law
971 South 13th St.
Baton Rouge, La.

Re: 22640 - Ledell Mae Jackson and Leonard Williams v. State of Louisiana

Dear Sir:

I am authorized by this court to advise that your **Motion for Stay Pending Appeal** was received and filed this **1st** day of **June**, 19**65**, and under the rules and practice of this Court will be presented for ruling without oral argument on or about **June 9, 1965***, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/ewh

Mr. Nils F. Douglas
Mr. Charles Morgan
Mr. Carl Rachlin
Hon. Jack P. F. Gremillion

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

**NOTE:**—If counsel does not reside within this Circuit, it will be permissible to sign and file this appearance, provided counsel is admitted either to the Bar of his own Circuit or of the Supreme Court of the United States.

APPEARANCES FOR COUNSEL

# United States Court of Appeals

## FOR THE FIFTH CIRCUIT

No. 22640

LEDELL MAE JACKSON and LEONARD WILLIAMS,

Appellants,

*versus*

STATE OF LOUISIANA,

Appellee.

The Clerk will enter my appearance as Counsel for the APPELLANT

(Name)

(Office Address)

(City)

NOTE.—*Must be signed by a Member of the Bar of the United States Court of Appeals for the Fifth Circuit. Individual and not firm name must be signed, and post-office address added.*

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
Office of the Clerk
New Orleans, La.

NOTICE:

ATTACHED IS FORM FOR THE ENTRY OF APPEARANCE WHICH SHOULD BE SIGNED AND RETURNED PROMPTLY SO THAT YOUR NAME, AS COUNSEL OF RECORD, CAN BE ENTERED ON THE DOCKET. IF THIS IS NOT DONE IT IS POSSIBLE THAT YOU MAY NOT RECEIVE THE USUAL NOTICES, SUCH AS THE TIME FOR FILING BRIEFS, ANY PRELIMINARY ORDERS ENTERED BY THE COURT IN YOUR CASE, AND COPY OF THE PRINTED CALENDAR WHEN ISSUED SHOWING TIME, DATE AND PLACE YOUR CASE IS ASSIGNED FOR ORAL ARGUMENT AND SUBMISSION.

EDWARD W. WADSWORTH,
Clerk

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

June 4, 1965

Messrs. Robert F. Collins,
Nils R. Douglas and
Lolis E. Elie
Attorneys at Law
2211 Dryades Street
New Orleans, La.

Mr. Fred Jackson
Assistant District Attorney
20th Judicial District
West Feliciana Parish
P. O. Box 517
St. Francisville, La.

Re: No. 22640 - Ledell Mae Jackson and
Leonard Williams vs.
State of Louisiana

Gentlemen:

Find enclosed copy of order this day entered by the Court in the referenced cause, which order is self-explanatory.

Yours very truly,

Edward W. Wadsworth
EDWARD W. WADSWORTH,
Clerk

jm
enc.
cc and enc.:
Hon. Jack P. F. Gremillion
Mr. Murphy Bell
Mr. Charles Morgan
Mr. Carl Rachlin
Clerk, 20th Judicial District
Court of Louisiana
Mr. A. Dallam O'Brien

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

---

No. 22640

---

LEDELL MAE JACKSON and LEONARD WILLIAMS,

Appellants

versus

STATE OF LOUISIANA,

Appellee

---

Appeal from the United States District Court for the Eastern District of Louisiana

---

Before JONES, WISDOM and GEWIN, Circuit Judges.

By the Court:

IT IS ORDERED that appellants' motion for stay of the District Court's order of remand pending appeal be hereby granted, subject to the further order of this Court.

(ORIGINAL FILED - JUNE 4, 1965)

new file

JOY 527-6514

**United States Court of Appeals**
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

June 10, 1965

**Mr. Murphy W. Bell**
**Attorney at Law**
**971 South 13th Street**
**Baton Rouge, Louisiana**

never convicted 1 felony

Lifetime resident 1 ~~Bat~~ [illegible] [illegible] 1955 E Baton Rouge

Re: **No. 22596 - Ledell Mae Jackson and Leonard Williams**
**-vs- State of Louisiana**
**No. 22640 - Ledell Mae Jackson and Leonard Williams**
**-vs- State of Louisiana.**

Dear Sir:

This is to advise that this office has received the transcript of record in the above case.

A deposit of $ 790.00 is requisite to cover the estimated costs of Court and printing of the record; this deposit is estimated as follows:

Ka 1/16/18 §222

| | |
|---|---|
| Estimated number of printed pages. (160)..... at $2.50 per page..........................$ | 400.00 |
| Reproducing (pages that cannot be set in type) and Inserting (booklets, patents, etc. furnished by counsel)..****................$ | 390.00 |
| Total Estimated Cost of Printing Record.....$ | 790.00 |
| Docketing Fee..........................................$ | |
| TOTAL.....................$ | 790.00 |

Usually the deposit required will exceed the actual cost of printing and the balance out of said deposit will be refunded after the record is printed.

(A CERTIFIED CHECK OR EXCHANGE ON NEW YORK OR NEW ORLEANS BANK, OR MONEY ORDER FOR THIS DEPOSIT IS DUE AND PAYABLE WITHIN 15 DAYS FROM RECEIPT OF THIS REQUISITION, AS PROVIDED IN RULE 23(2).

When the record is printed a copy will be forwarded to all counsel whose appearance has been entered, with notice as to the time for filing briefs, etc.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By George Bauer
Deputy Clerk

/bwc
cc: **Mr. Nils R. Douglas**
**Mr. Carl Rachlin**
**Mr. Charles Morgan**
**Hon. Jack P. F. Gremillion**
**Mr. Fred C. Jackson**

**** See Schedule Attached.

FPI—LK—3-31-65—3M—4683

# UNITED STATES COURT OF APPEALS
## FIFTH CIRCUIT

Edward W. Wadsworth
Clerk

Office of the Clerk

400 Royal Street
New Orleans, La.

MEMORANDUM FROM CLERK TO COUNSEL:

The attached requisition covers the cost of printing the entire record as bound and certified up by the District Court, including any exhibits which may be physically incorporated therein. This requisition does not cover the cost of printing any exhibits or depositions certified by the Clerk separately from the original bound record, which are automatically considered by the Court in their original form without the necessity of their being reproduced.

I am authorized to remind counsel that this Court encourages you to reduce by designation or stipulation the size of the record to be printed, in order to minimize the costs of appeal, by elimination of any unnecessary printing expense, such as that attributable to the printing of subpoenas, citations, summons, certificates of service, and such exhibits which may have been bound into the record*, but which could nevertheless still be conveniently considered by this Court in such form without being printed or photostated, etc., together with all other "matters not essential to the decision of the questions presented by the appeal." See Fifth Circuit Rule 23(a)(6),(b) and (c);Rule 75(e),F.R.C.P. Further, Rule 23(a) provides that "the Court may refer to other (unprinted) portions" of the record on file, or hereafter "cause others to be printed if found needful."

If, therefore, counsel desire to omit any portions of the record deemed unnecessary to be printed in the light of this memorandum, this may still be done either by stipulation or by separate designations exchanged and filed in this office within fifteen (15) days from the date of the enclosed requisition. If this is done, a revised requisition will be forwarded to counsel.

*If the Clerk of the District Court has not advised counsel, either by furnishing you with a copy of his index or otherwise, of the exhibits, if any, which have been physically bound into the record, the record on appeal may be released to counsel upon request for his inspection, for a limited period pursuant to Rule 5(4) of this Court.

# SCHEDULE OF CERTAIN AUTHORIZED SPECIAL PRINTING COSTS

This office is authorized to require advance deposits for, and to authorize payment to our official Court Printer through this office, of maximum, standard charges for special work, other than straight printed matter, as follows:

Reproduction (Whether by Photostating, Xeroxing or Otherwise)
Maximum authorized charge per page

| | |
|---|---|
| Check size | $ 7.50 |
| 8½ x 11 | 10.00 |
| 8½ x 14 | 12.50 |
| 14 x 18 | 15.00 |
| 18 x 22 | 25.00 |

Binding and inserting documents furnished for inclusion in the printed records by counsel or the parties in patent or admiralty cases, etc.;

Patent with printing on one side or both sides-
$2.00 per sheet
Other inserts and booklets - depending on size and structure ---------$5.00 to $20.00.

Counsel or the parties are also advised of their right to furnish their own copies of any documents to be inserted in printed records at their own cost, and without the necessity of their being set in type or otherwise reproduced, where that is found to be less expensive and provided all copies furnished for binding and insertion are clear and legible.

EDWARD W. WADSWORTH,
Clerk

# United States Court of Appeals for the Fifth Circuit

New Orleans La.

August 13, 1965

## FOR INFORMATION OF ALL COUNSEL—PLEASE READ CAREFULLY:

Re: No. 22596 - LEDELL MAE JACKSON and LEONARD WILLIAMS vs. ST. OF LOUISIANA

---

The record in the above entitled case is in final form. The time for filing BRIEFS is indicated in the following rule.

**RULE 24, as amended, Subsections 1, 3 and 4 OF THIS COURT, READ IN PERTINENT PART AS FOLLOWS:**

> **1. The Clerk shall mail a notice to each party or his counsel so soon as the record by printing, or otherwise, is in final form for a hearing. The counsel for the appellant, or petitioner, shall file with the Clerk of this Court within thirty days from the RECEIPT of such notice ***** twenty copies of a printed brief, one to be signed in handwriting by an attorney of this Court who has entered an appearance in the case; together with a certificate that a copy has been mailed to or previously served on the opposite party or parties. Four copies of typewritten briefs in behalf of poor persons in forma pauperis cases, with a like certificate of service, shall be sufficient. [All such typewritten briefs (motions or petitions, etc.) should be backed when filed.]**
>
> **3. The Counsel for appellee or respondent shall file with the Clerk of this court within twenty (20) days from the service upon him of opponent's brief ***** twenty copies of a printed brief, with a certificate that a copy has been mailed to or personally served on his opponent or opponents. His brief shall be of a like character with that required of the appellant or petitioner, except that no specification of errors shall be required and no statement of the case unless that presented by the appellant or petitioner is controverted.**
>
> **4. Reply or supplemental briefs in printed form, and containing a certificate of service upon opposing counsel, may be filed at any time without special leave of court.**

**Certificate of service upon *all* opposing counsel *must* be incorporated in *all* copies of briefs, motions, petitions or other documents filed.**

Since the Court desires that briefs from all parties be on file for its consideration well in advance of the assigned date for hearing, counsel should make every effort to file their briefs by the date due.

Notice will be issued to all counsel for whom an appearance has been entered of the date and place fixed for hearing, usually at least thirty (30) days in advance thereof.

**RULE 25, as amended January 19, 1956, reads in part as follows:**

> **"Not more than one-half hour on each side will be allowed for the argument, without special leave of the court **." (See important notation below)***

However, counsel for any party may waive oral argument and submit his case on brief, if he so desires, and notifies this office by the date fixed for hearing.

Any written request for special handling not provided for in the Rules, whether by formal motion, letter or otherwise, as well as any information which counsel desire the Clerk to communicate to the Court, should be submitted in quadruplicate, with an original and three legible copies.

EDWARD W. WADSWORTH
Clerk

---

* In order to facilitate the calendaring of the cases so that each day's arguments will not be unduly extended, the Clerk's office must be advised by the time the briefs are filed as to how many counsel will expect argument (not more than two for each party), and how much time each will need. This is particularly true of multi-party appeals. The Court upon the hearing "may allow such less time as shall appear to it sufficient for a fair presentation of the questions involved . . ." Rule 25 (3).

# COURT RULES

---

## UNITED STATES COURT OF APPEALS

## FOR THE FIFTH CIRCUIT

Before: Tuttle, Chief Judge and Rives, Jones, Brown, Wisdom, Gewin, and Bell, Circuit Judges.

### ORDER ADOPTING RULE 23(6)

It is ORDERED that the rules of this court be and they are hereby amended by adding § (6) to Rule 23, as follows:

(6) The provisions of subdivisions (a), (b), (c), (d), (e), (f), (g) and (i) of Rule 75, Federal Rules of Civil Procedure, are not applicable to appeals to this court from a District Court.

Dated: July 28, 1964

### ORDER ADOPTING RULE 24(2) (e)

It is ORDERED that the rules of this court be and they are hereby amended by adding subsection (e) to Rule 24(2), as follows:

(e) Except by permission of the court, briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and an addendum containing statutes, rules, regulations, etc.

Effective: September 1, 1964

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

New Orleans, Louisiana

Please be advised that briefs from both parties must be on file in advance of the assignment of this case for hearing on a yet undetermined date during this next Term beginning in October of this year. Accordingly, in order that this Court may meet its schedule of sittings for this entire next Term, your brief should be filed on time in accordance with the Court's rules.

Edward W. Wadsworth
EDWARD W. WADSWORTH,
Clerk

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

September 15, 1965

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: **No. 22596 - Ledell Mae Jackson and Leonard Williams**
**-vs- State of Louisiana**
**No. 22640 - Ledell Mae Jackson and Leonard Williams**
**-vs- State of Louisiana**

Gentlemen:

The following action has this day been taken in the above case:

(xxx) An extension of time has been granted to and including **October 15, 1965**

( ) for filing and docketing record on appeal.

( ) for payment of estimated printing costs.

( ) for filing appellant's printing designation.

( ) for filing appellee's printing designation.

( ) for filing reproduced copies of the record.

(xxx) for filing appellant's brief.

( ) for filing appellee's brief.

( ) for filing a petition for rehearing.

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) Order enclosed has been entered.

( )

/bwc

cc: **Mr. Harris David**
**Mr. Murphy W. Bell**
**Mr. Charles Morgan, Jr.**
**Mr. Carl Rachlin**
**Hon. Jack P. F. Gremillion**
**Mr. Fred C. Jackson**

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By ) G. F. Ganucheau

Deputy Clerk

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

May 20, 1965

Mr. A. Dallam O'Brien
Clerk
U. S. District Court
New Orleans, La.

Re: No. 22596 - Ledell Mae Jackson and
Leonard Williams vs.
State of Louisiana
(D.C. Nos. 1567 & 1566-
Criminal -Baton Rouge Div.)

Dear Mr. O'Brien:

Find enclosed certified copy of order this day entered by the Court in the referenced cause, which order is self-explanatory.

Please acknowledge receipt.

Sincerely yours,

Edward W. Wadsworth
EDWARD W. WADSWORTH,
Clerk

jm
enc.
cc and enc.:
Miss Mary Ann Sanford
Messrs. Robert F. Collins, Nils R.
Douglas and Lolis E. Elie
Mr. Murphy W. Bell
Mr. Carl Rachlin
Mr. Richard Kilbourne

U. S. COURT OF APPEALS
FILED
MAY 20 1965
EDWARD W. WADSWORTH
CLER

FOR THE FIFTH CIRCUIT

---

NO. 22596

---

LEDELL MAE JACKSON and LEONARD WILLIAMS,

Appellants,

v.

STATE OF LOUISIANA,

Appellee.

---

Appeal from the United States District Court for the Eastern District of Louisiana

---

(MAY 20 , 1965)

Before TUTTLE, Chief Judge, EDGERTON* and SMITH**, Circuit Judges.

BY THE COURT:

ORDER ON APPLICATION FOR STAY PENDING APPEAL FROM ORDER OF REMAND

This is an application for the stay of an order of remand entered by the United States District Court for the Eastern District of Louisiana remanding these cases to the State Court. On the papers and showing now presented, it has not been made to appear that there is a reasonable likelihood that this Court, on the merits, will find the District Court's order in error, especially in light of the nature of the allegations which form the basis of removal jurisdiction under Section 28 U.S.C.A. §1443(1).

The application for stay at this time is, therefore, DENIED.

---

* Senior Circuit Judge of the D. C. Circuit, sitting by designation.

** Of the Third Circuit, sitting by designation.

City of Jackson, Miss. vs. Salter, John R Jr. et al, 1963

Wisconsin

Please Retain Original Order

Box 3
Folder 2

Mississippi
Department of Secretary of State

HEBER LADNER, SECRETARY OF STATE
Jackson, Mississippi

REGISTERED MAIL
DELIVER TO ADDRESSEE ONLY
RETURN RECEIPT REQUESTED

CR We ought [illegible] file for this CR

No. 50127
6-6-63
11:55 A.M

Congress of Racial Equality
New York, New York

We hand you herewith copy of process, served on HEBER LADNER, Secretary of State, your agent and attorney for service of process in Mississippi, today issued by the Clerk of the Chancery Court of the 1st district of Hinds County, Mississippi, to which you are defendant and City of Jackson, Mississippi a Municipal Corporation is Complainant

You will understand, from a perusal of said process, that a suit is now pending in the above mentioned Court and you will give such matter the attention it requires.

cc:
E. W. Stennett
City Atty
Jackson, Miss

Very truly yours,

Heber Ladner

Secretary of State of Mississippi.

**THE STATE OF MISSISSIPPI**

**To the SHERIFF OF HINDS COUNTY—Greeting:**

We command you hereby that you summon National Association for the Advancement of Colored People, its domicile and principal place of business in the City of New York, New York, (Serve process on Medgar Evers, Field Secretary, and on Hon. Heber Ladner, Secretary of the State of Mississippi), and Congress of Racial Equality, with its domicile and principal place of business in the City of New York, New York, (Serve process on Dave Dennis Field Secretary and Hon. Heber Ladner, Secretary of State of the State of Mississippi).

Defendant, if to be found in your County, so that they be before the Chancery Court at a term to be holden in and for the County of Hinds, First District, at the courtroom thereof in the City of Jackson, on the Second Monday of September, 1963, to answer a bill of complaint exhibited against them by City of Jackson, Mississippi a Municipal Corporation

SUMMONS SERVED
Upon Secretary of State as your agent for process under the laws of Mississippi.
Date of receipt and Service 6-6-63 11:55 A.M
Receipt No. 3009
Fee $3 00
Heber Ladner
Secretary of State
State of Mississippi

Complainant in our said Court; and further to do and receive what our said Court shall have considered in this behalf:

And have then and there this summons.

Witness, FRANK T. SCOTT, Clerk of the said Court, by his signature and also the seal of said Court, affixed at office in Jackson, Mississippi.

Issued the 6th day of June, 1963.

FRANK T. SCOTT, Clerk

(SEAL)

By Ruth May, D. C.

W. T. Neely,
E. W. Stennett, and
Thos. H. Watkins, Attorneys

DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON, A Municipal Corporation
of the State of Mississippi, COMPLAINANT

VS. NO. 63,429.

JOHN R. SALTER, JR., ET AL, DEFENDANTS

## WRIT OF TEMPORARY INJUNCTION

TO JOHN R. SALTER, JR., DICK GREGORY, RALPH E. KING, JR., DR. A. D. BEITTEL, JAMES WILSON JONES, CHARLES JONES, GLOSTER B. CURRENT, MERCEDES WRIGHT, MEDGAR EVERS, WILLIE LUDDEN, DAVE DENNIS, JOHNNY FRAZIER, BETTE POOLE, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation, CONGRESS OF RACIAL EQUALITY, A Corporation, THE TRUSTEES OF TOUGALOO UNIVERSITY, A Corporation, THEIR AGENTS, MEMBERS, EMPLOYEES, ATTORNEYS, SUCCESSORS, AND ALL OTHER PERSONS IN ACTIVE CONCERT WITH THEM:

WHEREAS, the City of Jackson, a municipal corporation of the State of Mississippi, has filed its Bill in the above Court against you and others, praying for an injunction in the matters hereinafter set out; and

WHEREAS, the Chancery Court of the First Judicial District of Hinds County, Mississippi, has directed a temporary injunction to issue as therein prayed, its fiat therefor being endorsed on said Bill, directing the temporary injunction to issue upon the execution by the City of Jackson of a bond conditioned according to law in the sum of Two Thousand Five Hundred ($2,500.00) Dollars; and

WHEREAS, said bond has been given and approved;

NOW, THEREFORE, you are hereby commanded and temporarily enjoined, until further order of this court, from engaging in, sponsoring, inciting or encouraging mass street parades or mass processions, or like demonstrations without a permit, unlawful blocking of the public streets or sidewalks, trespassing on private property after being warned to leave the premises by the owners or person in possession of said private property, congregating on the streets or public places as mobs, and unlawfully picketing business establishments or public buildings in the City of Jackson, Hinds County, Mississippi, and from performing acts calculated to cause breaches of the peace in the City of Jackson, Hinds County, Mississippi, and from conspiring to engage in unlawful street parades, unlawful processions, unlawful demonstrations, unlawful boycotts, unlawful trespasses, and unlawful picketing, and from doing any acts designed to consummate conspiracies to engage in said unlawful acts of parading, demonstrating, boycotting, trespassing and picketing or other unlawful acts and from engaging in acts and conduct customarily known as "kneel-in's" in churches in violation of the wishes and desires of said churches.

You will refrain from doing any of the foregoing acts until the further order of this Court, upon penalty of contempt.

WITNESS THE SIGNATURE AND SEAL of the undersigned, this 6th day of June, 1983.

FRANK T. SCOTT, CHANCERY CLERK

BY Ruth May D.C.

TO THE SHERIFF OR ANY LAWFUL
OFFICER OF Hinds
COUNTY, MISSISSIPPI:

You will execute the above writ of temporary injunction and make return to the next term of this Court.

FRANK T. SCOTT, CHANCERY CLERK

BY Ruth May D.C.

# MEMORANDUM

TO: Mr. Rachlin

FROM: Mr. Vladeck

I spoke to Jim Farmer about the Injunction and Complaint which are attached.

Although several of the individually-named defendants are Mississippi residents, I still believe we would be entitled to remove the action to the Federal District Court. I would then consider the advisability of moving to vacate the temporary injunction and insist on an immediate trial of the issue, setting it up so that perhaps we could get to the Fifth Circuit by the return date of a current action in the State Court, which isn't until September 9th.

Farmer tells me that NAACP is considering, or has taken some action, and that you are familiar with it. Let me know if there is anything further you want me to do.

SCV:rp
Encl.

June 10, 1963

JASPER, PAUL vs. STATE OF NEW YORK, 1964
(1964 WORLD'S FAIR DEMONSTRATIONS)

Box
Folder

Please Retain Original Order

on the day of , 1964

PRESENT :

HON.

DISTRICT JUDGE

- - - - - - - - - - - - - - - - - - - - - - - - -x

PAUL JASPER, : 64C 886
Petitioner,
:
-against- **ORDER**
:
PEOPLE OF THE STATE OF NEW YORK,
Respondent. :

- - - - - - - - - - - - - - - - - - - - - - - - -x

The above named petitioner, having been charged under §§ 722 and 1851 of the Penal Law of the State of New York, and having removed the prosecution of the said action to this Court on September 2, 1964, along with 40 other petitioners similarly charged under the said Penal Law, and having entered into a stipulation with the District Attorney of Queens County and the Attorney General of the State of New York, in which all parties thereto consent, remanding the prosecution of the said petitioner's case to the Criminal Court of the City of New York, County of Queens, without prejudice to any of the other petitioners similarly situated; and the said motion having come on to be heard on the day of , 1964, and after hearing George Schiffer, attorney for petitioner, in support of said motion and due deliberation having been had thereon,

NOW, upon reading and filing the Stipulation dated the day of , 1964, together with the affidavit attached thereto, and upon the proceedings held heretofore in the inal Court of the City of New York and for the reasons set forth herein; the

MOTION is granted and it is,

ORDERED that, as regards the petitioner PAUL JASPER, this case is

REMANDED to the Criminal Court of the City of New York, County of Queens, for all purposes, without prejudice to the cases of the remaining 40 petitioners similarly situated.

SO ORDERED:

U. S. D. J.

11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - -x

PAUL JASPER, :
Petitioner, :
-against- 64C 886
:
PEOPLE OF THE STATE OF NEW YORK,
Respondent. :

- - - - - - - - - - - - - - - - - - - - - - - - -x

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

GEORGE SCHIFFER, being duly sworn, deposes and says that he is an attorney at law, and one of the attorneys for the above named petitioner.

That petitioner was arrested on April 22, 1964 at the New York World's Fair, and charged with violating §§ 722 and 1851 of the Penal Law of the State of New York, the said arrests arising out of a lawful, peaceful demonstration at the World's Fair.

That, for reasons already known to this Court, and contained in the Petition for Removal dated September 2, 1964, the prosecution of the said actions against petitioner herein was duly and properly removed to this Court, together with similar prosecutions against 40 other of the petitioners, where it is presently awaiting this Court's determination of the Motion to Remand made by the District Attorney of Queens County and the Attorney General of the State of New York, argument of which motion has been set for January 13, 1965.

That, on information and belief, petitioner's personal affairs makes it impossible for him to await the outcome of the said Motionn to Remand, and does require that the proceedings against him be finally determined in the immediate future, as petitioner plans to attend school in either Puerto Rico or Mexico beginning January, 1965.

That, while petitioner continues to insist upon his innocence to the charges laid against him, he feels that to continue to assert his rights in the action now before this Court would seriously act to his detriment in denying him the opportunity to attend the anticipated schools in January, and therefore feels well advised to accept Remand to the Criminal Court of the City of New York, so as to permit a final determination of these charges well enough in advance to allow his attendance of school this coming semester.

WHEREFORE, your petitioner prays that the prosecution of the charges against him be Remanded to the Criminal Court of the City of New York, County of Queens, for all purposes, without prejudice to the remaining 40 petitioners similarly situated.

GEORGE SCHIFFER, attorney for petitioner

Paul Jasper

PAUL JASPER

Sworn to before me this
23d day of November, 1964

Notory Public

JULES D. ZALON
Notary Public, State of New York
No. 31-9786035
Qualified in New York County
Commission Expires March 30, 1966

On this 23d day of November, 1964, before me personally came PAUL JASPER, to me known and known to me to be the person described in, and who joined in the execution of, the above affidavit, and he thereupon duly acknowledged to me that he joined in the execution of the same.

Notory Public

JULES D. ZALON
Notary Public - State of New York
No. 31-9786035
Qualified in New York County
Commission Expires March 30, 1966

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - - -x

ERIC EISENBERG, ETAL, :
Petitioners, :

-against- : 64C 886

PEOPLE OF THE STATE OF NEW YORK, :
Respondents. :

- - - - - - - - - - - - - - - - - - - - - - - - - - -x

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, that the case of PAUL JASPER v. PEOPLE OF THE STATE OF NEW YORK, one of the abovementioned 41 cases heretofore removed to this Court from the Criminal Court of the City of New York, be, and it hereby is remanded to the Criminal Court of the City of New York, subject to the approval of the Court, without prejudice to any of the other such abovementioned petitioners.

Dated: November , 1964
New York County
New York

______________________
Counsel for petitioner Jasper

______________________
PAUL JASPER

Frank D. O"Connor
District Attorney,
Queens County,
Attorney for the People of the State of New York

Per______________________

Louis J. Lefkowitz,
Attorney General
Attorney for the Criminal Court of the City of New York

Per______________________

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - -x

PAUL JASPER, :
Petitioner,
:
-against- 64C 886
:
PEOPLE OF THE STATE OF NEW YORK,
Respondent. :

- - - - - - - - - - - - - - - - - - - - - - - - -x

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

GEORGE SCHOFFER, being duly sworn, deposes and says that he is an attorney at law, and one of the attorneys for the above named petitioner.

That petitioner was arrested on April 22, 1964 at the New York World's Fair, and charged with violating §§ 722 and 1851 of the Penal Law of the State of New York, the said arrests arising out of a lawful, peaceful demonstration at the World's Fair.

That, for reasons already known to this Court, and contained in the Petition for Removal dated September 2, 1964, the prosecution of the said actions against petitioner herein was duly and properly removed to this Court, together with similar prosecutions against 40 other of the petitioners, where it is presently awaiting this Court's determination of the Motion to Remand made by the District Attorney of Queens County and the Attorney General of the State of New York, argument of which motion has been set for January 13, 1965.

That, on information and belief, petitioner's personal affairs makes it impossible for him to await the outcome of the said Motionn to Remand, and does require that the proceedings against him be finally determined in the immediate future, as petitioner plans to attend school in either Puerto Rico or Mexico beginning January, 1965.

That, while petitioner continues to insist upon his innocence to the charges laid against him, he feels that to continue to assert his rights in the action now before this Court would seriously act to his detriment in denying him the opportunity to attend the anticipated schools in January, and therefore feels well advised to accept Remand to the Criminal Court of the City of New York, so as to permit a final determination of these charges well enough in advance to allow his attendance of school this coming semester.

WHEREFORE, your petitioner prays that the prosecution of the charges against him be Remanded to the Criminal Court of the City of New York, County of Queens, for all purposes, without prejudice to the remaining 40 petitioners similarly situated.

GEORGE SCHIFFER, attorney for
petitioner

PAUL JASPER

Sworn to before me this
day of , 1964

Notory Public

On this day of , 1964, before me personally came PAUL JASPER, to me known and known to me to be the person describeddin, and who joined in the execution of, the above affidavit, and he thereupon duly acknowledged to me that he joindd in the execution of the same.

Notory Public

## GENERAL RELEASE

In consideration of One Dollar ($1.00) paid in hand to me, and for other good and valuable consideration, I, PAUL JASPER, do hereby release the Pinkerton National Detective Agency, The F&M Schaef~~f~~er BrewING Co. New York City Police Department, the City of New York, the State of New York, the New York World's Fair 1964-1965 Corporation, and the employees and agents of such abovementioned parties, their heirs, executors and assigns, from any and all liability arising from my arrest at the Schaefer Pavilion, at the New York World's Fair on April 22, 1964.

P. J.

Paul Jasper
PAUL JASPER

Dated: December 16, 1964
Kew Gardens
Queens County
New York

witness

William R. Lewis
WILLIAM R. LEWIS
NOTARY PUBLIC, State of New York
No. 41-7538575
Qualified in Queens County
Term Expires March 30, 1966

December 16, 1964

Part I-B Queens Criminal Court
Hon. George Balbach

Present: Alvin Heutchy (Schaefer)
Bob Cook (World's Fair)

Jasper, and father
Jasper showed up two hours late
Balbach was almost as interested in that as he was in finally disposing of the case

Pleaded guilty to disorderly conduct
other charges withdrawn( 2036) and dismissed (1851)

Fined: $25.00 good riddance!

Appearing: Jules D. Zalon for defendant

Balbach, on a number of occasions, stated that he had no intemperance with civil rights demonstrations.....this point he seemed to wish to make extremely clear.

New York..... D

Plans now are for the prompt bringing of the defendant to the calender of Part II-B (Criminal Court) for pleading and sentencing.....most preferrably this coming week, Nov 30 through December 4------------- before JJ. Ringle, Fggan and O'Niel----

---

11-18-64

QR7-4904

Paul Jaspen -- S- on i bar -

wants to plead & get out

leave USA Jan-Feb

says= Puerto Rico" OR Mexico

1- left message w/ Ehrlich

2- **EDNY** 596-8000

affidavit (facts)
consent & w/draw, signed
f atty + Δ-
(Δ's signature must be acknowledged)

also= consent stipulation
signed f atty + D.A.

Nov-30

I-B
Ciaffi

II-B
Ringle
Fagan
O'Niel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

ERIC EISENBERG, ETAL, x
Petitioners
x
-against- 64C 886
x
THE PEOPLE OF THE STATE OF NEW YORK, ETAL,
Respondents. x

- - - - - - - - - - - - - - - - - - - - - - -x

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED that the case of PAUL JASPER v. THE PEOPLE OF THE STATE OF NEW YORK, one ~~xx~~ of the abovementioned 41 cases heretofore removed to this Court from the Criminal Court of the City of New York, be, and it hereby is remanded to the Criminal Court of the City of New York, subject to the approval of the Court, without prejudice to any of the other such abovementioned ~~cases~~ petitioners.

Dated: November , 1964
Kew Gardens
Queens County,
New York,

________________________
Counsel for defendant Jasper

Frank D. O'Connor
District Attorney,
Queens County,
Attorney for the People
of the State of New York

Per______________________

Louis J. Lefkowitz,
Attorney General
Attorney for the Crimianl
Court of the City of New Yk

Per______________________

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

PAUL JASPER, :
Petitioner,
:
-against- 64C 886
:
THE PEOPLE OF THE STATE OF NEW YORK,
ETAL, Respondents. :

- - - - - - - - - - - - - - - - - - - - -x

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

together w/ similar prosecutions against 40 others of 2 petitions

____________________, being duly sworn, deposes and says that he is an attorney at law, and one of the attorneys for the above named petitioner. That petitoner was arrested on April 22, 1964 at the New York World's Fair, and charged with violating §§ 722 and 1851 of the Penal Law of the State of New York, the said arrest arising out of a lawful, peaceful demonstration at the World's Fair; Petitioner is presently awaiting trial on these charges in the Court

That, for reasonsalready known to this Court, and contained in the Petition for Removal dated September 2, 1964, the prosecution of the said actions against the petitioner herein was duly and properly removed to this Court, where it is presentlyawaiting this Court's determination of the Motion of Remand made by the District Attorney of Queens County and the Attorney General of the State of New York, argument on which motion has been set for January 13, 1965.

on information & belief

That the petitioner's personal situation makes it impossible for him to await the outcome of the said Motion of Remand, and does require that the proceedings against him be finally determined in the immediate future, as petitioner plans to attend school in either Puerto Rico or Mexico beginning January, 1965.

That, while petitioner continues to assert his innocence to the charges laid aginst him, he feels that to continue to assert his rights in the action now before this Court would seriously act to his ~~future~~ detriment in denying him the opportunity to attend the anticipated schools in January. and therefore feels that he would be well advised to accept Remand tothe Criminal Court of the ~~State~~ of New York, ~~and [illegible] final determination~~

so as to/~~allow~~ permit a final determination of these charges well enough in advance to allow his attendance at his chosen school for the coming semester.

WHEREFORE, your ~~petitioner~~ petitioner prays that the prosecution of the charges against him be Remanded to the Criminal Court of the City of New York, Queens County, ~~without prejudice to any of~~ for all purposes, without prejudice to the ~~petitioners~~ cases of the remaining 40 petitioners similarly situated.

Attorney for petitioner

Petitioner Paul Jasper

Sworn to before me this
day of , 1964

On this day of , 1964, before me personally came PAUL JASPER, to me known and known to me to be the person described in, and who joined in the execution of, the above affidavit, and he thereupon duly acknowledged to me that he joined in the execution of the same.

Notory Public

At a Special Term ~~Part~~ ex parte
of the United States District Court
held in and for the Eastern District of New
York, ~~held in~~ at the Courthouse,

on the day of , 1964

PRESENT :

HON.

JUDGE

- - - - - - - - - - - - - - - - - - - - - - -x

Paul Jasper :
Petitioner,
:
-against- ORDER
:
People of the State of New York,
Respondent. :

- - - - - - - - - - - - - - - - - - - - - - -x

The abovenamed petitioner, having been charged under §§ 722 and 1851 of the Penal Law of the State of New York, and having ~~duly and properly~~ removed the prosecution of the said action to this Court on September 2, 1964, along with 40 other petitioners similarly charged under the said Penal Law, and having entered into a stipulation with the district attorney of Queens County and the Attorney General of the State of New York, in which all parties thereto consent , remanding the ~~said petitioners~~ prosecution of the said petitioner's case to the Criminal Court of the City of New York, without prejudice to any of the other petitioners similarly situated; and the said motion having duly come on to be heard on the day of , 1964, and after hearing , attorney for ~~defendant~~ petitioner, in support of said motion and due deliberation having been had thereon,

NOW, upon reading and filing the Stipulation dated the day of , 1964, together with the affidavit attached thereto, and upon the proceedings held heretofore in the Criminal Court of the City of New York and for the reasons set forth herein; the

MOTION is granted and it is

ORDERED that, as regards the petitioner PAUL JASPER, this case is

REMANDED to the Criminal Court of the City of New York for all purposes, without prejudice to the cases of the remaining 40 petitioners similarly situated.

~~ENTER:~~ So ordered

U.S.D.J.

time =

[illegible] vs. NEW YORK 1969 [illegible]

Please Retain Original Order

40-44-568 June 3

OFFICE OF ~~PROBATION~~

REPORT TO COURT

8 15
8 20 DATE: 4/15/69
COUNTY: NY

**RATING:** (ROR) Exclusive of Present Charge
Information rated Favorably for ROR: Yes_____ No_____
Verified: Yes_____ No_____

**RATING:** (FINANCIAL)
Has own Counsel ☑
Assign Counsel ☐
Information Only ☐

Comments:

Name Hulbert, James Age: 27 Charge: Riot Docket #

RESIDENCE IN N.Y.C. for 17 yrs

2569 7th Ave 283-0914 1 yr Family
Address when Arrested Phone for with whom

Prior Address _____ for _____

1. Will you have your own attorney? Yes ✓ No____ Uncertain____
2. Do you want the court to assign legal counsel? Yes____ No ✓ Why?
3. How are you supported? Welfare:_____ Where? _____ Amount
   Employment:_____ Where? _____ Amount
   Other_____ Specify _____ Amount
4. How much money do you have? Cash____ Home____ Bank____ Others____
5. How many dependents? ____ Any Employed? Yes____ No____ Weekly earnings____
6. If dependent, on whom? _____ Weekly income_____
7. Do you or family own Home____ Auto____ Real Property____ Insurance____ Securities____

Describe

FAMILY TIES: Whom _____ Address _____

EMPLOYMENT (when Arrested) _____ For _____ Unemployed? _____
name and address Last Date _____

Previous Employer _____ Last Date _____

SCHOOL: _____ Currently: Yes____ No____ Date Left _____

Hospital/Health _____

PRIOR CONVICTIONS: Felonies_____ Misdemeanors_____

On Probation_____ Parole_____ Where_____ P.O._____

If Released: Will live at _____ with _____

Identification: _____

References _____ Address _____ phone
_____ Address _____ phone

Investigater

I have consented to this investigation and certify that this information is correct

X Hulbert H James
Signature

Date:
Judge:
Court Action:

Form F-1 75M DP 1127087 (68) 44

FELONY AFFIDAVIT

# Criminal Court of the City of New York

Part 1A2, County of New York

STATE OF NEW YORK,
COUNTY OF New York } ss. :

Ptl. Thomas B Doyle #25112

of No. TPF

being duly sworn, says that on April 15, 1969 in between 3:25 pm & 3:35 pm

at and between 45th St & 5th Ave and 42d St & Lexington Ave, NYC

County, City and State of New York, the defendant(s) Hulbert H James

did commit the offense(s) of 240.06 Riot 1st 240.08 Incit Riot 205.30 Resist Arrest

A.C. 435.60

in that: The defendant was present at the above places at an assembly composed of hundreds of persons who were occupying the entire roadway of 5th Ave to the exclusion of vehicular traffic thereon and many of them being seated in the roadway. Deponent first observed defendant standing in the roadway of 5th Ave between 45th and 46th Streets and heard defendant shout to the assembly, urging them, among other things, to "Kill the mother-fucking pigs." Defendant moved up to the head of the assembly and marched in the front ranks of it along the roadway of 5th Avenue to 42d St and then east along the east-bound half of the 42d street roadway to Lexington Avenue. At the corner of 42d street and Lexington aVe the defendant climbed on top of a public telephone booth and shouted to the assembly, among other things, "We are going over the top of these cops - they are not going to stop us - we are going south on Lex - break the windows." When defendant shouted to the assembly as stated above, he used an apparatus, to wit, a bullhorn, to amplify the sound and defendant had no permit to use such apparatus on the public streets. Defendant then went to the front of the assembly and led a charge of approximately 40 to 50 of them into the line of uniformed policemen stationed there, thereby causing physical injury to at least 3 of such policemen. When deponent endeavored to place defendant under arrest for his conduct defendant pushed deponent and swung at him with his fists.

Sworn to before me

April 15, 1969

Thomas B

Affiant

Judge.

DEFENSE ATTORNEY